

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 18, 2001

10:08 A.M.

Reported by:
Valorie Phillips
Contract No. 150-99-002

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

Michal C. Moore, Associate Chairman

Robert A. Laurie

Robert Pernell

Arthur Rosenfeld

James Boyd, Ex Officio

STAFF PRESENT

Steve Larson

Kent Smith

William Chamberlain

Susan Gefter

Jonathan Blees

Jeff Ogata

Eileen Allen

Tim Schmelzer

Tim Olson

Peter Villanueva

Daryl Mills

David Maul

Lance Shaw

Gabriel Herrera

Melinda Merritt

Tim Tutt

PUBLIC ADVISER

Marija Krapceovich

ALSO PRESENT

Michael Carroll

Sharon Segner

Lawrence Tobias

Eugene Varanini

Dr. Weatherwax

Jane Luckhardt

Holly Duncan

Tim Rossknecht

Jocelyn Thompson

Walter Boatwright

Jeff Culley

Chris Chaddock

Charles Gordon

Patti Camatti

Bob Judd

Steven Kelley

Steve Ponder

Orville Moe

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 P R O C E E D I N G S

2 10:08 a.m.

3 ASSOCIATE CHAIRMAN MOORE: We're going
4 to convene the regular business meeting of the
5 California Energy Commission for Wednesday, April
6 18th. Commissioner Keese is out of town on
7 official state business. I will chair the meeting
8 today. And we'll stand for the salute, and be led
9 by Commissioner Laurie.

10 (Thereupon the Pledge of Allegiance was
11 recited by all.)

12 COMMISSIONER LAURIE: Mr. Chairman.

13 ASSOCIATE CHAIRMAN MOORE: Commissioner
14 Laurie.

15 COMMISSIONER LAURIE: I just want to
16 note, sir, that when it comes to legislative
17 reports I've indicated to Mr. Schmelzer that I was
18 interested in a perhaps even an abbreviated
19 discussion of the bill creating the SB-6, I think
20 that's the bill, the -- because I know it's been
21 done and I have to admit to not having a good
22 handle on its repercussions or even its contents.

23 So I've asked Mr. Schmelzer to take a
24 few minutes and offer explanation.

25 ASSOCIATE CHAIRMAN MOORE: All right,

1 we'll look forward to that. That will happen at
2 the end of the meeting.

3 Let's take our consent calendar. We
4 have only one item. Is there a motion on consent?

5 COMMISSIONER LAURIE: So moved.

6 ASSOCIATE CHAIRMAN MOORE: Moved by
7 Commissioner Laurie.

8 COMMISSIONER ROSENFELD: Second.

9 ASSOCIATE CHAIRMAN MOORE: Second by
10 Commissioner Rosenfeld. All those in favor say
11 aye.

12 (Ayes.)

13 ASSOCIATE CHAIRMAN MOORE: Those
14 opposed? Motion carries four to zero.

15 We're going to take an item out of
16 sequence because I know we have a number of folks
17 that are on line in our digital call-up system.
18 So we're going to take item 22 out of sequence.

19 And I would like to indicate that this
20 item, I need to make a couple of formal remarks on
21 item 22, which is the Otay Mesa Generating
22 project. And the item is for the consideration of
23 possible approval of the Presiding Member's
24 Proposed Decision on the Otay Mesa Generating
25 project, proposed by PG&E National Energy Group,

1 docket 99-AFC-5.

2 The item was included in the notice of
3 availability of the Presiding Member's Proposed
4 Decision which was originally published March 12,
5 2001. Was served on all parties and interested
6 persons on the mailing list for the Otay Mesa
7 proceedings.

8 And I understand that we will have a
9 number of individuals who are participating by
10 phone, listening in. We will deal with
11 identification of those folks if it becomes
12 necessary and they want to speak, at a later
13 point.

14 Ms. Gefter, would you like to introduce
15 the item.

16 HEARING OFFICER GEFTER: Yes. On March
17 12, 2001, the Committee, which consists of
18 Commissioners Laurie and Pernell, issued their
19 PMPD recommending certification of the Otay Mesa
20 Generating project.

21 All issues have been resolved. The
22 clarifications are contained in the list of errata
23 that was issued yesterday and distributed here
24 today. And the errata would be included in the
25 final decision upon Commission consideration and

1 vote on the PMPD.

2 For perspective, the Otay Mesa project
3 is the 14th merchant power plant to be certified
4 since deregulation. With Otay Mesa, the Energy
5 Commission will have sited over 9000 megawatts
6 since April of 1999.

7 In addition, in the next several weeks
8 at least three more projects will come before the
9 Commission increasing the total to more than
10 10,000 megawatts in the last two years. And
11 that's the background for our siting process.

12 The background for this case is that the
13 project is on an undeveloped parcel zoned for
14 industrial and commercial uses, located about 15
15 miles southeast of San Diego. About one and a
16 half miles north of the U.S./Mexico border.

17 All potential environmental impacts will
18 be mitigated to insignificant levels. The project
19 will interconnect with the SDG&E transmission
20 system. And also PG&E National Energy Group,
21 which is the applicant in this case, plans to sell
22 the project to Calpine Corporation, but will
23 retain a 50 percent interest in energy sales.

24 We had several intervenors in the
25 project. We had Cabrillo Power, which owns the

1 Encina Project in the San Diego area. Also Duke
2 Energy, which operates the South Bay Power Plant.

3 Also we had Ms. Holly Duncan, who, I
4 believe, is on the phone, as well as Mr. Claycomb
5 from the Save our Bay organization. All of the
6 intervenors were very active and I expect they
7 would like to make comment today.

8 So in order for us to move along I will
9 introduce the applicant, and the staff, and then
10 the other parties.

11 ASSOCIATE CHAIRMAN MOORE: Thanks, Ms.
12 Gefter.

13 COMMISSIONER LAURIE: Mr. Chairman.

14 ASSOCIATE CHAIRMAN MOORE: Commissioner
15 Laurie.

16 COMMISSIONER LAURIE: I'd ask Ms. Gefter
17 to take five minutes and summarize what the
18 primary issues were that we will be hearing about
19 over the course of the discussions today.

20 HEARING OFFICER GEFTER: All right, in a
21 nutshell, I hope. Cabrillo and Duke Energy raised
22 issues regarding the constrained natural gas
23 distribution system in the San Diego region.

24 Natural gas curtailments to both the
25 Encina and South Bay plants have occurred over the

1 past six months, and continue to occur in the
2 present time.

3 The CPUC is currently conducting
4 proceedings on the gas delivery issues and the
5 pipeline infrastructure in the San Diego area.

6 Both Cabrillo and Duke have argued to
7 the Committee that the construction and operation
8 of the Otay plant would add constraints to the gas
9 supply system, and cause additional gas
10 curtailments which would result in fuel oil burns
11 by the Encina and South Bay plants, since both
12 projects are licensed to also burn fuel oil when
13 gas is not available.

14 The intervenors have asked the Committee
15 to find that the Otay project would then be the
16 cause of the additional fuel oil burns and
17 degradation to the regional air quality. The
18 Committee declined to find a nexus and did not
19 agree with the intervenors on that subject.

20 In addition, the intervenors have
21 indicated that the transmission system in the San
22 Diego area is brittle and it is that way right
23 now. They have asked the Committee to impose
24 conditions on the Otay Mesa project to mitigate
25 the existing conditions in the transmission

1 system.

2 Again, the Committee declined because
3 the project has agreed to reconductor lines to the
4 substation point of interconnection, which is the
5 extent of our authority. And to the extent that
6 Cal-ISO has reviewed the potential impacts of the
7 project, Cal-ISO has not recommended additional
8 mitigation downstream.

9 In addition, the Otay Mesa project has
10 indicated that they have a condition precedent
11 with the North Baja Pipeline project which is
12 currently pending before FERC and moving along.
13 And the intervenors have requested the Committee
14 to add a condition requiring the Otay Mesa project
15 to interconnect with the North Baja project and
16 not with the San Diego gas supply system. The
17 Committee declined to impose that condition,
18 finding it unnecessary.

19 And that is the nutshell summary of the
20 issues.

21 COMMISSIONER LAURIE: Could you -- Mr.
22 Chairman, if I may -- take a minute and summarize
23 the primary points brought forth by the public
24 intervenors, please?

25 HEARING OFFICER GEFTER: Yes. The

1 public intervenors are Holly Duncan and William
2 Claycomb from Save Our Bay.

3 Mr. Claycomb is a huge proponent of
4 photovoltaic panels and proposed, as an
5 alternative to this project, that panels be
6 installed on rooftops throughout the San Diego
7 area to protect air quality and to mitigate
8 potential CO emissions and global warming
9 implications from the burning of natural gas at
10 the power plant.

11 The Committee declined to require the
12 applicant to install photovoltaic panels, since
13 that is beyond the scope of this project, and
14 certainly not within the objectives, nor required
15 under the alternatives analysis.

16 However, we appreciate Mr. Claycomb's
17 information and our research staff is certainly
18 aware of the documents that Mr. Claycomb has
19 filed, and is conducting research on photovoltaics
20 and will continue to do so.

21 Ms. Duncan was very concerned about the
22 PM10 emissions from the project, and is not
23 satisfied with the PM10 mitigation plan that was
24 proposed by staff and applicant, and accepted by
25 the Committee.

1 However, we feel that the plan is a
2 reasonable plan. The Air District has agreed to
3 work with this plant. And we also encourage the
4 applicant to continue working with the community
5 groups on their air quality issues. And we expect
6 that Ms. Duncan will also address her concerns
7 regarding PM10 in her comments.

8 COMMISSIONER LAURIE: Thank you, Mr.
9 Chairman.

10 ASSOCIATE CHAIRMAN MOORE: Thank you.
11 Let's turn to the applicant and ask for remarks
12 regarding the PMPD.

13 MR. CARROLL: Thank you. My name is
14 Mike Carroll. I'm with Latham and Watkins on
15 behalf of PG&E National Energy Group. And with me
16 is Sharon Segner, the Project Manager for the Otay
17 Mesa project.

18 Before I begin there's a disclaimer that
19 I need to make with the Commission's indulgence.
20 PG&E National Energy Group is not the same company
21 as Pacific Gas and Electric Company, the
22 California utility, and is not regulated by the
23 California Public Utilities Commission. Customers
24 of Pacific Gas and Electric Company do not have to
25 buy products or services from PG&E National Energy

1 Group in order to continue to receive quality
2 regulated services from Pacific Gas and Electric
3 Company. Thank you.

4 With respect to the intervenors'
5 comments on the PMPD, we are essentially in
6 agreement with the conclusions and the findings
7 reached in the PMPD. We did submit some minor
8 comments and clarifications which have been, for
9 the most part, incorporated in the errata prepared
10 on the PMPD. We've reviewed the errata and we are
11 in concurrence with all the proposed changes set
12 forth in the errata.

13 With respect to the comments and the
14 issues that have been raised on the PMPD,
15 intervenors Duke and Cabrillo have raised two
16 issues essentially regarding impacts on electric
17 system reliability and impacts on regional air
18 quality.

19 The proposals that have been set forth
20 by the intervenors to address these issues are to
21 first introduce additional evidence prepared by
22 Cabrillo's expert witnesses, and then do condition
23 certification of the project on an independent
24 fuel supply and back-up fuel capability.

25 In response to those issues we'd simply

1 like to point out that these are not new issues.
2 Cabrillo and Duke have been intervenors in this
3 proceeding since 1999. They have actively
4 participated in these proceedings and provided
5 extensive expert testimony on these issues,
6 including expert testimony of Dr. Weatherwax on
7 transmission issues and expert testimony of Mr.
8 Rubenstein on air quality.

9 Cabrillo filed two appeals in this
10 matter, one on December 8th and one on December
11 15th, seeking to reopen the evidentiary record for
12 the purpose of admitting additional evidence on
13 these very same issues that they've raised in the
14 comments to the PMPD.

15 After written briefing and oral argument
16 the Commission rejected Cabrillo's appeals in a
17 four-page written decision on January 17th of
18 2001, in which the Commission concluded that
19 intervenors had adequate opportunity, and I'm
20 quoting, "to present evidence of the project's
21 potential impacts on reliability and regional air
22 quality, and to propose reasonable permit
23 conditions to mitigate those impacts."

24 Not to be deterred by the order of the
25 Commission, Cabrillo has submitted additional

1 public comment that it would seek to have entered
2 into the record.

3 In our view, having participated in the
4 proceedings, and having appealed to reopen the
5 evidentiary record, Cabrillo is back, and Duke
6 along with them, for the third bite of the apple
7 on these issues.

8 In the most recent filing of comments on
9 the PMPD the intervenors have suggested that CEQA
10 has not been satisfied. It's true that CEQA
11 requires the agency to consider and respond to
12 significant environmental issues raised by
13 commenters. But that has certainly been done
14 here.

15 As this Commission has previously
16 concluded Cabrillo was given ample opportunity to
17 raise its concerns, and the PMPD reflects careful
18 consideration and response to those concerns that
19 were raised during the public hearings.

20 Having discharged its obligations, CEQA
21 does not require the Commission to continue to
22 respond in a formal way each and every time the
23 intervenors raise the same issues again.

24 Cabrillo does cite four cases in support
25 of its argument that the Commission has failed to

1 comply with CEQA. We'd simply like to point out
2 that in two of those cases, Sunderstrom and
3 Longshoremen, no environmental impact report was
4 prepared at all. And in the other two, Vallejo
5 and People v. Kern County, no responses were
6 provided to the comments that were submitted on
7 the environmental impact report.

8 So those cases are easily
9 distinguishable from the case here, where we have
10 hundreds of pages in the evidentiary record on the
11 very issues that Cabrillo and Duke would seek to
12 have revisited today.

13 The process has been very exhaustive.
14 Cabrillo, in its most recent filing, accuses the
15 CEC of responding to the heat of the moment and to
16 rubber-stamping the AFC. Comments like that
17 barely deserve a response except to point out that
18 the AFC for this project was filed on August 2nd
19 of 1999. I don't think there's any question about
20 the fact that it's been an exhaustive and lengthy
21 process.

22 With respect to the other intervenors,
23 Ms. Duncan and Mr. Claycomb, as Ms. Geftter stated,
24 Ms. Duncan has continued to express concerns about
25 fuel oil burns at the South Bay and Encina plants.

1 I think that those issues are the same as those
2 raised by Duke and Encina, and I've just addressed
3 those.

4 In addition, Ms. Duncan has expressed
5 some concerns about health impacts from PM10. She
6 has made four suggestions: That a noncancer
7 health risk assessment be conducted. Two, that
8 enhanced PM10 mitigation be provided. Three, that
9 gas supply issues be resolved prior to
10 certification. And, four, that an alternative to
11 distributed generation be implemented.

12 In response to those four suggestions, a
13 noncancer health risk assessment was conducted.
14 Both the acute and chronic health risks were below
15 significance levels. That's in the final staff
16 assessment on page 29.

17 The project does meet BACT limits for
18 PM10. No offsets are required under the Air
19 District's rules. However, the applicant did
20 provide \$1.2 million for PM10 mitigation over and
21 above what was required by the air quality
22 regulations.

23 With respect to the third issue raised
24 by Ms. Duncan regarding gas supply issues, we've
25 already responded to that with respect to the

1 comments raised by Duke and Cabrillo.

2 And then finally, with respect to Ms.
3 Duncan's request that distributed generation be
4 considered as an alternative to the project, that
5 has been considered. The PMPD discusses that
6 beginning on page 23.

7 With respect to Mr. Claycomb and his
8 proposal that the project -- that an alternative
9 to the project be implemented involving
10 photovoltaics, that has also been addressed in the
11 PMPD.

12 So, in summary, we believe that all of
13 the issues that have been raised by the
14 intervenors on the PMPD are issues that have been
15 exhaustively analyzed and resolved over the course
16 of these very lengthy and very detailed
17 proceedings.

18 We are supportive of the PMPD, as
19 proposed, with the errata provided this morning.
20 Thank you very much.

21 ASSOCIATE CHAIRMAN MOORE: Do any of the
22 Commissioners have questions for the applicant?
23 Mr. Ogata, Ms. Allen, do you have remarks from the
24 staff?

25 MS. ALLEN: Staff is satisfied with the

1 PMPD in combination with the related errata.
2 Staff has sponsored a witness from the California
3 ISO, Mr. Tobias. He told me in a telephone
4 conversation last week that he intended to
5 participate and may want to speak at this time.

6 ASSOCIATE CHAIRMAN MOORE: Mr. Tobias,
7 are you on the line?

8 MR. TOBIAS: Yes, I am.

9 ASSOCIATE CHAIRMAN MOORE: I'll turn
10 back to you in just a moment. Other comments, Ms.
11 Allen?

12 MS. ALLEN: Staff has no other comments.

13 ASSOCIATE CHAIRMAN MOORE: So as to the
14 current state of the errata you are in total
15 agreement?

16 MS. ALLEN: Yes, we are.

17 ASSOCIATE CHAIRMAN MOORE: Mr. Tobias,
18 I'm going to turn to you and ask you to summarize
19 the ISO reaction to the Presiding Member's
20 Proposed Decision, and the relationship that the
21 ISO has to the congestion that has been noted in
22 some of the comments, what you see in the long
23 term for alleviating that congestion.

24 MR. TOBIAS: Okay. I agree with the
25 proposed decision as it's been modified because it

1 does now summarize the comments that I submitted.

2 And in reference to what's changed since
3 we started the application for certification
4 procedure, initially the agreement between the
5 parties, the applicant and San Diego Gas and
6 Electric was except transmission reinforcements to
7 Miguel and congestion management beyond Miguel.

8 Congestion management basically would be
9 adjustment of other generation within the ISO
10 control area, under certain circumstances, to
11 allow Otay Mesa to operate without reliability
12 problems.

13 As things stand right now, the
14 congestion management associated with imports into
15 San Diego at the same time a full output of Otay
16 Mesa has been resolved in the facility's
17 interconnection agreement between San Diego Gas
18 and Electric and the applicant.

19 And that is that for a double line
20 outage north of Miguel 230 kV, one or both units
21 at Otay Mesa would be dropped off line. And that
22 would mitigate any reliability problems.

23 In effect, what this does is there would
24 no longer be restriction on maximum imports at the
25 same time that Otay Mesa is up.

1 The only remaining issue is local
2 reliability problems within San Diego area
3 associated with more resources in the San Diego
4 area at times than load. And under those
5 conditions you may very well have reduced output
6 at South Bay and Encina Power Plants.

7 This has not been studied historically
8 by San Diego Gas and Electric to develop
9 transmission plans, identify reliability problems
10 and mitigate them for reduced output out of these
11 power plants.

12 This is something that San Diego Gas and
13 Electric has incorporated into their five-year
14 transmission expansion plan that they currently
15 have under study at this time. And they're paying
16 particular attention to South Bay Power Plant,
17 reduced output of that. They will be identifying
18 any reliability problems associated with reduced
19 output out of these plants, and resolve them.

20 In effect, any reliability problems that
21 could be attributed to Otay Mesa or the operation
22 of additional resources in that area will be
23 mitigated such that the only remaining issue that
24 may or may not be there is that these transmission
25 projects to mitigate local reliability problems

1 associated with reduced output out of South Bay
2 and Encina, they may or may not be built by the
3 time Otay Mesa comes into operation. But the
4 likelihood that they would not be there is very
5 slim.

6 Mitigation problems, regardless of
7 whether it's a transmission project or another
8 type of mitigation, will be in effect at that
9 time. There will be no lapses in reliability on
10 the transmission system.

11 This is a normal outcome of the fact
12 that the generation is being built by one party
13 and transmission by another. And the parties -
14 building the transmission cannot move forward on
15 that until they have assurance that the generation
16 project will go forward. Which, hopefully, is
17 what's being accomplished today.

18 And pursuant to that, San Diego Gas and
19 Electric will move forward with the transmission
20 projects.

21 Therefore, again, in summary, I do not
22 anticipate any reliability problems or congestion
23 associated with the Otay Mesa Generating project.

24 ASSOCIATE CHAIRMAN MOORE: Thank you.
25 Are there questions by Commissioners for the ISO

1 representative?

2 All right. I'm going to turn, then, to
3 the intervenors, and, Mr. Varanini, I'm going to
4 ask if you'd like to come forward and address us
5 on behalf of Cabrillo.

6 MR. VARANINI: I'd like to bring my
7 consultant with me, so bear with me.

8 ASSOCIATE CHAIRMAN MOORE: Perhaps Mr.
9 Ogata would yield his seat to your consultant.

10 MR. OGATA: You can have it.

11 MR. VARANINI: I need another seat.

12 ASSOCIATE CHAIRMAN MOORE: Temporary
13 displacement.

14 (Laughter.)

15 ASSOCIATE CHAIRMAN MOORE: Good morning.

16 MR. VARANINI: Good morning.

17 Commissioners, I'm Gene Varanini; I'm with the
18 lawfirm of Livingston and Mattesich here in
19 Sacramento. And I represent Cabrillo Partners,
20 energy partners in San Diego. We operate the
21 Encina plant.

22 And I have a prepared statement. I want
23 to really read from it rather than ad lib, because
24 I think it has some very important points that
25 need to be made specifically.

1 With me today is Mr. Weatherwax, who is
2 our consultant on the project. He provided
3 testimony earlier in the case, and provided very
4 detailed comments on the Presiding Member's
5 Proposed Decision during the CEQA comment period.
6 And he also will have some comments, but I think
7 more importantly he may be able to answer some of
8 the questions that you might have.

9 ASSOCIATE CHAIRMAN MOORE: And your
10 remarks are being made available to counsel of the
11 applicant?

12 MR. VARANINI: His remarks are being
13 made available and I will certainly make mine
14 available, as well.

15 ASSOCIATE CHAIRMAN MOORE: Thank you.

16 MR. VARANINI: Commissioners and
17 colleagues, I'm saddened today to be before you to
18 argue against a Commission Committee's Presiding
19 Member's Proposed Decision.

20 There's no one in this room who's more
21 aware of the difficulty of the mission of turning
22 around minds that are made up, and a vast amount
23 of work that's gone into this proceeding.

24 But, at the same time, I'm greatly
25 encouraged by one of the errata comments. I was

1 concerned last week that the important detailed
2 comments and analysis of the chronological cost
3 production modeling done by Mr. Weatherwax was
4 either going to be dismissed out of hand, or
5 perhaps even suppressed by the Committee hearing
6 this case. Instead I am pleased that the triers
7 of fact have indicated that they read the results
8 of the modeling exercise and, as people of great
9 honor, I take them at their word.

10 However, consequences of the ultimate
11 findings that the analysis is not persuasive needs
12 to be carefully reviewed by the full Commission.
13 I would say this is virtually a case of first
14 impression in this matter.

15 Commissioners, you have in the comments
16 of Mr. Weatherwax and his prior testimony, along
17 with the prior air emissions impact testimony of
18 Mr. Gary Rubenstein, a unique chance to begin the
19 reversal of some ten years of electricity market
20 restructuring, sloganeering and cant.

21 Like any revolution, restructuring of
22 electricity markets casts aside both the good as
23 well as the bad attributes of its predecessor
24 system.

25 The one attribute which should have been

1 retained at all costs, but was zealously cast
2 aside and suppressed, was the utilization of
3 integrated resource planning. No such analytical
4 reliability tool can or should be cast down or
5 out.

6 Its value to policy makers, decision
7 makers and market participants cannot be denied.
8 It is the lingua Franca of electricity business,
9 both private and public. It is virtually the only
10 analytical instrument available to counter the
11 organic so-called market imperfections of the
12 electricity market, including the vagaries of AC
13 power and its attributes which defy normative
14 commodity market operations, and including its
15 universality to the public purpose of business,
16 its instantaneous nature and generally its
17 inability to be stored.

18 What has happened in this proceeding is
19 the revival of integrated resource planning
20 providing planning opportunities and analytical
21 values in the analysis of the microsystem of the
22 San Diego region.

23 Here the values of integrated resource
24 planning provide understanding of the integrated
25 power plant operations in the region, the

1 necessary existing and new infrastructure
2 requirements for fuel transport and fuel
3 availability, and the very brittle nature of a
4 historically neglected transmission system
5 revealed in a total calculus of the intermeshed
6 and intertwined policies, operations and results
7 that are captured by the model.

8 Two of you Doctor Commissioners, Drs.
9 Rosenfeld and Moore, have personal and
10 professional association with the principle and
11 analytical processes of integrated resource
12 planning in your own careers prior to your
13 appointment here.

14 Dr. Rosenfeld is a national figure in
15 the energy conservation field. And Dr. Moore, in
16 the areas of directing appropriate publicly funded
17 incentives to RD&D actions and electricity
18 generation and conservation, and equally complex
19 area of incentives for alternate sources of
20 electricity.

21 In these cases the line between
22 appropriate publicly funded incentives and the
23 murky area of subsidy cannot simply be analyzed by
24 intuition. Both of you particularly know that
25 model results are counterintuitive or challenge

1 conventional wisdom, that particular attention
2 must be paid to them.

3 What are the counterintuitive results
4 which have been generated by Mr. Weatherwax's
5 integrated resource model exercise and the result
6 in outputs? The first, the reliability of Otay
7 must be maintained, should it come on line, by
8 operating our power plant at Encina 10 percent
9 more than it would have operated without Otay.
10 And Duke's output and operation would be increased
11 by 50 percent more than it would without Otay.

12 So we have an increase, the
13 counterintuitive aspect here is that rather than
14 having our machines basically deferred, that they
15 would run harder to maintain reliability. And Mr.
16 Weatherwax will have some comments about the ISO
17 matters discussed just a few moments ago.

18 These operations directly required by
19 the existence of Otay will increase fuel oil burns
20 at ours and Duke's power plants, increasing the
21 combined increase in emissions by up to 13 times
22 the pollution which would have occurred if Otay
23 had not come on line.

24 More fuel oil will be burned even if all
25 of the various complex and currently uncoordinated

1 activities to bring in more gas transport to Otay
2 occur. These are very -- I think particularly
3 those of you who have modeling experience need to
4 think about what that means in terms of the
5 counterintuitive aspects of what the model reveals
6 and your view about the necessity to challenge the
7 conventional wisdom here.

8 What is it that we think the Commission
9 can do, even at this late date? I think one of
10 the questions that has gone back and forth has
11 been our inability to get information on the
12 record at appropriate points in time. I have a
13 very long explanation of that that I would only go
14 into if you asked me to. It involves some very
15 complex matters, internal and external matters, at
16 the Commission.

17 But I think there's some things that you
18 could do today that would not stop the deployment
19 of this particular machine and would actually
20 create an environment in which there is both a
21 response to integrated resource planning analysis
22 and the attributes that are required therefrom.

23 First, you could condition Otay to
24 create a clean fuel backup to natural gas. Allow
25 the project to go forward and insure that this

1 capability addition occurs by the flexible
2 application of your own excellent staff compliance
3 unit.

4 You do not need to have a reopening.
5 You do not need to take any action based on what's
6 in the record today, other than to direct a backup
7 fuel, and then to have that backup fuel facility
8 covered in your compliance process.

9 Compliance processes today are expansive
10 compared to what they were in the 1980s and the
11 compliance unit has a very very strong challenge
12 in a whole series of cases in terms of doing
13 follow up work and analysis.

14 A second thing you could do is to
15 condition Otay's operation without any backup fuel
16 capability on completion of its two new feeder
17 pipelines, one in this country and the other
18 outside the country. That seems on be on the
19 record, a condition that would create financing
20 problems. And I point that out for your review.

21 I think at an absolute minimum you could
22 provide a real warning to the applicant, the
23 banks, and the public as the financier of the last
24 resort, as well as sister federal, state,
25 regional, local and foreign agencies of the

1 absolute need for coordinated activity in this
2 particular environment.

3 Finally, and most importantly, you
4 should take a short amount of time in camera to
5 discuss among you the value of integrated resource
6 planning analysis and its application in this
7 case.

8 If this were not possible we would urge
9 the nonCommittee Members of the Commission to vote
10 no. This vote would establish today, as the nadir
11 of the anti-intellectual aspects of restructuring.

12 In addition, it would reverse the
13 improper private order of the former
14 Administration to you to stop doing such work for
15 the public.

16 It would further establish a beach-head
17 for a process which will assist in the descent of
18 our economy from a 30 billion. through a 60
19 billion, up to a 90 billion decompression of our
20 state's economy.

21 It's interesting to recall that the
22 first 30 billion increment of costs that the
23 ratepayers have endured would have been -- could
24 have been \$60 billion had it not been for the
25 integrated resource assessments done by this

1 Commission and by the deferral and cancellation of
2 a number of plants which could have bankrupted the
3 utilities 25 years ago.

4 Most important, current policy panic in
5 the electricity sector of state policy and
6 concurrent deconstruction of our economy can, in
7 part, be brought under control by your courageous
8 action of voting no today, if that's what's
9 necessary.

10 ASSOCIATE CHAIRMAN MOORE: Mr. Varanini,
11 you added under your condition one a switch to
12 clean fuel backup. What's the source of that that
13 you anticipate?

14 MR. VARANINI: We would believe that it
15 could be one of a series of natural gas
16 derivatives involving compressed gas, or could be
17 propane, or other types of fuels, rather than
18 bunker crude or other kinds of more noxious fuels.

19 ASSOCIATE CHAIRMAN MOORE: Before I turn
20 to Dr. Weatherwax, let me ask if my colleagues
21 have any questions for Mr. Varanini.

22 COMMISSIONER PERNELL: I have one. Just
23 to piggyback on that, are you advocating for clean
24 backup fuel throughout the region, or just this
25 particular project?

1 MR. VARANINI: Well, I think,
2 Commissioner, that we all would want to use as
3 much clean backup fuel as possible. But the
4 operating conditions that are in effect right now
5 basically have our plants running very very hard,
6 and to take them down to retrofit or to do other
7 activities would simply make a bad situation even
8 worse.

9 I think in the long run that plant was t
10 phase out, certainly phase out various fuel oil
11 applications. And that that particular policy was
12 stopped by ISO because of the reliability
13 considerations.

14 COMMISSIONER PERNELL: Thank you.

15 ASSOCIATE CHAIRMAN MOORE: Gentlemen,
16 other questions?

17 COMMISSIONER LAURIE: I have a couple.
18 Mr. Varanini, you heard the comments of the ISO
19 representative regarding congestion management.
20 How do you respond to the idea that even in the
21 absence of all of the facilities being completed
22 there's adequate mitigation available for
23 congestion management in the near term?

24 MR. VARANINI: Well, I think first of
25 all we have to separate what his responsibilities

1 are and what his comments were.

2 First of all, as I understand, they have
3 nothing to do with natural gas or fuels going into
4 the plants.

5 Secondly, the ISO witness, in his
6 testimony, indicated that they don't have
7 jurisdiction over this matter; that their
8 jurisdiction has been suspended by decisions made
9 at FERC. And that they are currently unable to
10 direct any particular scheme or plan.

11 And finally there are, and were, several
12 schemes and plans, particularly I-F that were
13 proposed or discussed. And when we tested those
14 plans we still came up with the need to run our
15 plants harder and to provide actual reliability in
16 the field, rather than a theoretical judgment made
17 by the ISO folks, if that's, in fact, what they
18 did.

19 Many many months ago I requested of the
20 Committee the opportunity to take the depositions
21 of these folks because it's such a complicated
22 area, and because we didn't want to create
23 problems in the record in terms of timing. And we
24 were told at that particular point in time it
25 wasn't necessary; that the normative process could

1 go forward; there'd be adequate time to fully
2 develop the record. And I think this particular
3 area has demonstrated an ad hoc-ery that's
4 exceptional in terms of the importance of what
5 needs to happen to get the plant on line reliably.

6 ASSOCIATE CHAIRMAN MOORE: You've been
7 poking at the issue of the integrated needs
8 assessment, and the idea that we ought to revisit
9 that, or to have it, in fact, in our tool kit.

10 And I'm wondering how you see a decision
11 on this Commission today reviving that, or in
12 fact, bringing it back other than an ad hoc use as
13 a single tool.

14 MR. VARANINI: I think that because of
15 the microcosm of San Diego, that the fact it has a
16 limited number of plants, a limited amount of
17 infrastructure, and a very totally constrained
18 situation, that the work that Mr. Weatherwax has
19 done is a solid example of what integrated
20 resource planning can do, and what it can tell
21 you.

22 It's not a need analysis in the old
23 bean-counting sense of you got to the nth plant
24 and n+1 was out, and n was in. It's much more, I
25 think much more analytical and much more

1 instructive to you, as decision makers. And I
2 think that the important aspect is to take a look
3 at it to see what the model tells you; to make
4 some judgments about it; and then proceed.

5 It seems to us that the model confirms
6 two things: One, in our own economic short-term
7 interest we ought to be leading the band down the
8 El Camino Real for this project. And secondly,
9 that Duke ought to be the drum major.

10 But, in fact, we see other revelation in
11 the model that causes us grave concern in terms of
12 sustainability down in the region. I don't think
13 the region can take or will take an increase 13
14 times the emission outputs of ours and Duke's
15 plants. I don't see that happening. I see real
16 collision perhaps of EPA PSD and perhaps just on
17 the ground when things go from bad to worse.

18 And certainly, you know, you have a
19 charge, as far as I can see, to look at these
20 things and make your decisions. I think the
21 Committee did that. I think it's a laudable piece
22 of work. We disagree with it, and we think that
23 if you can provide some guidance to the Committee
24 with a little deeper background on these modeling
25 issues, that there may be a way to work out a

1 compromise that suits everyone's needs and
2 concerns.

3 ASSOCIATE CHAIRMAN MOORE: Let me ask a
4 question of Dr. Weatherwax, if I can, since he's
5 here. Does your modeling exercise take into
6 account the proposed expansions down to Rosarita
7 and the new pipeline that would be coming in in
8 the Sempras tariff?

9 DR. WEATHERWAX: The answer to that is
10 yes. We chose to parameterize the amount of gas
11 availability and the manner in which it was used
12 at Rosarita.

13 And then, further, to look at the total
14 implications of what's euphemistically referred to
15 as congestion management. We looked at cases
16 where the pipeline came in and supplied the full
17 requirement for Otay, and that's including, which
18 is actually twice as high as Otay has indicated in
19 their showing of interest for the pipeline.

20 And even in those cases, because of the
21 extreme levels that the existing units have to
22 operate, you would actually have increased
23 pollution and substantially increased oil burning.

24 And so we looked at a range of --

25 ASSOCIATE CHAIRMAN MOORE: Excuse me,

1 whoever's coming in on the line, we're going to
2 need you to keep quiet. We have a witness
3 testifying. Thanks. Dr. Weatherwax.

4 DR. WEATHERWAX: All right. So at any
5 rate I think over a credible range of natural gas
6 supply scenarios we encounter this problem, is the
7 bottomline.

8 ASSOCIATE CHAIRMAN MOORE: And does your
9 model allow you to come in on, or take exception
10 to the remarks that the ISO was making? How do
11 you see the role of congestion management in the
12 broadest sense being affected by the approval of
13 this project?

14 DR. WEATHERWAX: Well, I would not even
15 say we're taking exception to it. I think we're
16 quantifying the effect of congestion management.
17 Congestion management is a euphemistic way of
18 saying that you must operate South Bay, in
19 particular, and also Encina at higher levels of
20 operation than they would otherwise operate at.

21 And that is the form of solution to the,
22 quote-unquote, the reliability issue in San Diego
23 that would otherwise obtain by the quasi-bandaidd
24 approach of interconnection that has been approved
25 for the Otay Mesa Power Plant.

1 ASSOCIATE CHAIRMAN MOORE: Gentlemen, do
2 you have --

3 MS. SEGNER: May I make one comment?

4 ASSOCIATE CHAIRMAN MOORE: Excuse me,
5 I'm going to turn to my colleagues here for a
6 second. Do you have questions for Dr. Weatherwax
7 or Mr. Varanini?

8 COMMISSIONER LAURIE: Mr. Chairman, no,
9 I do not have questions. I have absolutely no
10 intent of pursuing this issue at this point.

11 This issue has been discussed at great
12 length as part of the evidentiary process. The
13 Committee examined the testimony of all the
14 witnesses.

15 In addition, during the conference on
16 the PMPD Dr. Weatherwax submitted additional
17 testimony as public comment. And that is part of
18 the record.

19 So the issues that Mr. Varanini and Dr.
20 Weatherwax have presented are not new issues. The
21 Committee considered the testimony of all the
22 witnesses, and issued its decision accordingly.

23 The record is in place. I anticipate
24 the potentiality of litigation on this issue. And
25 although I have some thoughts I choose not to add

1 those thoughts to the record at this time for fear
2 of confusing the record as it is already in place.

3 My view, which I believe Commissioner
4 Pernell concurs with, is properly reflected in the
5 decision before you. So the question that has
6 been the subject of discussion the last few
7 minutes is something that we have spent many many
8 hours and many days in consideration upon. And I
9 choose not to add to that discussion today.

10 ASSOCIATE CHAIRMAN MOORE: All right.
11 Well, let me ask if there are any other questions
12 on the part of the Commissioners for these
13 intervenors? Commissioner Rosenfeld.

14 COMMISSIONER ROSENFELD: Since Gene
15 Varanini said is his counterintuitive point, I
16 would ask Mr. Weatherwax two things. One, can you
17 explain why the existing plants have to run harder
18 when Otay Mesa comes in?

19 And also, did this interesting issue
20 come up earlier in front of the Committee?

21 COMMISSIONER LAURIE: Let me respond to
22 that question to Dr. Rosenfeld. The answer is
23 yes. And certainly to the extent that the Chair
24 and the other Commissioners want to ask questions,
25 you have every right to do so.

1 But, the subject was discussed and
2 presented at length in front of the Committee.
3 And if we would have permitted Mr. Varanini to
4 have his way, we would still be discussing it in
5 front of the Committee.

6 So we did have to put parameters around
7 it.

8 In answer to your question, yes, the
9 issue was discussed, it was presented as part of
10 the evidentiary process.

11 COMMISSIONER ROSENFELD: Well, in that
12 case maybe I'll ask Mr. Weatherwax, just in, you
13 know, one minute to say what the issue is. But, I
14 did hear you, Commissioner Laurie.

15 DR. WEATHERWAX: Okay, yeah, let me just
16 preface it slightly by saying that I brought up
17 the general issue in a qualitative vein in the
18 earlier testimony and then there was, of course,
19 requests that the evidentiary record be extended
20 so that we could complete some modeling in order
21 to quantify the effects.

22 And so I think, to some degree, it was
23 but superficially dealt with during the
24 evidentiary hearings.

25 The key issue has to do with the manner

1 in which interconnection has been agreed to
2 between San Diego and Otay. As is not too
3 surprising, if you throw a 550 megawatt power
4 plant in at a location in a system that there was
5 not planning for a plant, that has repercussions.

6 One of the ways to solve those
7 repercussions is to build the initial transmission
8 within the San Diego system required to do the
9 additional reconductoring, to include the
10 additional equipment in the system, to handle
11 contingencies associated with the plant. That was
12 not done in this case.

13 The choice that was made, and as I
14 labeled it, a bandaid, was to do some moderate
15 reconductoring only between Miguel, which was the
16 first point of interconnection, and the plant,
17 itself.

18 Given that those circumstances, you have
19 concerns when there are contingencies, when lines
20 leading out of Miguel fail. And, of course, you
21 want to maintain a system at all costs so that you
22 do not destroy your wires infrastructure, and
23 therefore can't restore nearly immediately the
24 load that you've lost.

25 So in order to do that on both the 70 kV

1 system and on the 138 kV system, the plants at
2 South Bay and at Encina must run more when Otay is
3 present.

4 So we have the counterintuitive aspect,
5 whereas most people would think, well, Otay will
6 come in and it's cheaper to run. We certainly all
7 agree with that. And so it'll operate more and
8 displace the generation from these other units.

9 That would be true were the system
10 prepared to accept the power from Otay. It is
11 not, and so the results are that you have
12 substantially increased operations required by the
13 other units in order to implement the congestion
14 management approach approved, or at least acceded
15 to by the ISO.

16 ASSOCIATE CHAIRMAN MOORE: Does that
17 answer your question?

18 COMMISSIONER ROSENFELD: Yeah. Clearly
19 it would be nice if we had more time to understand
20 this in detail, but I understand there's a time
21 pressure. So, thanks.

22 ASSOCIATE CHAIRMAN MOORE: Commissioner
23 Laurie.

24 COMMISSIONER LAURIE: Let me respond to
25 Dr. Rosenfeld. There's no time pressure. There's

1 no time pressure here today; there's no time
2 pressure in getting this project approved.

3 I'm certainly most interested in you
4 being satisfied as to what the record says, and as
5 to what the facts are.

6 All I've indicated to you is that this
7 is not a new issue for the members of the
8 Committee. Certainly before you vote you have to
9 be satisfied that you have all the information
10 available to you.

11 So, I would take issue with the fact
12 that there is time pressure.

13 ASSOCIATE CHAIRMAN MOORE: Time
14 pressure. Chair concurs that this is -- if we
15 don't get enough answers for the members today,
16 then we'll carry this over

17 COMMISSIONER BOYD: Mr. Chairman.

18 ASSOCIATE CHAIRMAN MOORE: Commissioner
19 Boyd.

20 COMMISSIONER BOYD: I'd like to know
21 what the response, or at least comment of the ISO
22 representative would be to Dr. Weatherwax's
23 presentation.

24 ASSOCIATE CHAIRMAN MOORE: Is the ISO
25 representative still here?

1 MR. TOBIAS: Yes, I am. This is Larry
2 Tobias.

3 Just a couple things. The documents, as
4 they've been presented from Mr. Weatherwax, do not
5 include the remedial action scheme that's been
6 agreed upon between San Diego Gas and Electric and
7 the applicant.

8 And that remedial action scheme
9 mitigates or takes the place of congestion
10 management between the output of Otay Mesa and
11 imports in the San Diego Gas and Electric system,
12 such that the only remaining reliability issue
13 would be, like I said, the impact of lower
14 generation output of South Bay and Encina during
15 peak load periods in San Diego.

16 And San Diego Gas and Electric is
17 currently evaluating that, and they will mitigate
18 it.

19 And to the extent that I have authority
20 over getting these done versus influence in
21 getting these done, I have a significant amount of
22 influence to see that these things are put in
23 place at the correct time such that reliability is
24 maintained. And to my satisfaction that will be
25 done.

1 Only one other comment I would like to
2 add, and that is the portrayal of San Diego's
3 system as being neglected and brittle. I would
4 have to argue against that very strongly. And
5 just looking at the record of San Diego Gas and
6 Electric's five-year expansion plans completed for
7 1999 and 2000, and what they're working on right
8 now. And their transmission planning is very
9 thorough, and they're meeting or exceeding all
10 reliability criteria.

11 ASSOCIATE CHAIRMAN MOORE: Thank you.

12 COMMISSIONER BOYD: Thanks.

13 ASSOCIATE CHAIRMAN MOORE: All right,
14 with that, Mr. Varanini, Dr. Weatherwax, I'm going
15 to thank you and I'm going to turn to one of the
16 other intervenors, Jane Luckhardt, and ask Jane to
17 come up and make her comments on behalf of Duke,
18 is that correct?

19 MS. LUCKHARDT: That is correct. Hi,
20 this is Jane Luckhardt from Downey, Brand, Seymour
21 and Rohwer on behalf of Duke Energy North America.

22 There are a couple of things I would
23 just like to clarify in regards to the
24 characterizations of DENA's position in this case.
25 One of those has to do with our primary concern.

1 Our primary concern is gas supply and an increase
2 in fuel oil burning. And that is really the issue
3 that we have looked at, and the heart of our
4 concern.

5 There's another issue that came up that
6 I would also like to clarify, which was the
7 implication that DENA would like Otay Mesa to have
8 dual fuel capability. That is inaccurate. We are
9 of the position that everyone should have an
10 adequate supply of natural gas, and that none of
11 the facilities should be required to burn any type
12 of alternative fuel. And that is our position on
13 that dual fuel issue.

14 Also, just to clarify the request that
15 we had in this case, we asked that Otay Mesa -- we
16 asked that the North Baja pipeline be in operation
17 when Otay Mesa comes into operation, not that Otay
18 Mesa only connect to North Baja.

19 Only that because that has no inherent
20 purpose for us. We want more gas into San Diego.
21 Having North Baja in operation provides more gas.
22 And that is also our position.

23 And in light of that I ask that the
24 Commission correct on the errata on page 6 the
25 third paragraph of the errata where it indicates

1 that both Cabrillo and DENA ask that Otay Mesa
2 install dual fuel capability. We would like that
3 corrected to say that that is something that
4 Cabrillo had requested, and not DENA.

5 COMMISSIONER LAURIE: I concur with
6 that, Mr. Chairman.

7 ASSOCIATE CHAIRMAN MOORE: Okay. I see
8 it, and we'll make that change.

9 MS. LUCKHARDT: Okay, thank you. And
10 then, as DENA has stated throughout this
11 proceeding, we are not here to oppose this
12 project. We have appreciated the opportunity to
13 express our concerns regarding gas supply. We
14 find the progress on the North Baja pipeline very
15 encouraging.

16 And we are actively -- we have
17 intervened in support at FERC for the American
18 portion of the North Baja pipeline.

19 At this point we are pleased, and we
20 feel it's very important that the Commission and
21 that the Committee has taken into account the
22 concerns of all the intervenors in this case.

23 And we feel it is very important that
24 the Committees and this Commission continue to
25 accept and consider concerns of all parties. And

1 in that way, you can make an informed decision.

2 And we feel that the Committee has
3 considered our concerns, although we don't
4 necessarily agree with the decision that has been
5 made, we accept the decision of the Committee.
6 And we will accept the decision reached by the
7 Commission.

8 I thank you.

9 ASSOCIATE CHAIRMAN MOORE: Thank you,
10 Ms. Luckhardt. Are there questions for the
11 intervenor? Thank you. We appreciate your
12 remarks.

13 We have two public intervenors who are
14 present by phone, Holly Duncan and William
15 Claycomb. Do you have comments that you would
16 like to make, either of you?

17 MS. DUNCAN: Holly Duncan. I would like
18 to make comments.

19 ASSOCIATE CHAIRMAN MOORE: Go ahead, you
20 have the floor.

21 MS. DUNCAN: I, once again, raise the
22 issue and concern, as a former state employee,
23 I've heard statements made today that if you feel
24 that the record is not accurate you can defer the
25 decision today. I respectfully request that you

1 do exactly that.

2 As a former state employee who had to
3 make decisions of eligibility, which I believe are
4 comparable to the decision that you'll be making
5 here today, I was required, in my job, to make
6 that decision based on the record that I had in
7 front of me, which the facts were there. And not
8 based on how we would like that record to appear
9 to us.

10 I've heard much discussion again today,
11 as we've heard throughout this entire proceeding,
12 on a very serious issue of gas availability.
13 Everything in this record said we have not
14 resolved that issue. We think there is the
15 potential for resolution through expansion of
16 SDG&E's pipeline or North Baja pipeline.

17 But at one status conference
18 Commissioner Laurie said he wanted a will-serve
19 letter. I don't have one. No one has ever sent
20 me a copy of such a document, even though I'm an
21 intervenor. So, I'm supposed to get those things.

22 We heard discussion here today about a
23 problem of constraint for natural gas
24 availability. We've heard throughout the
25 proceeding about some people, who are putting

1 their straws into this malt, have more efficient
2 straws. But I don't buy into the fact that just
3 because the straw is more efficient, the malt gets
4 drunk down.

5 So, we've heard concerns and the concern
6 I have raised repeatedly is in the area of
7 particulate matter. The applicant said,
8 correctly, that my local air pollution control
9 district is not here for the 2.8 million sets of
10 lungs in San Diego County when it comes to
11 particulate matter.

12 The research that I've done, that I was
13 trained to do as an examiner at State Disability
14 Insurance, was to get to the bottom of how serious
15 the health risk for particular matter is to the
16 citizens here. It's a very serious health risk,
17 and it is essentially unmitigated.

18 So, from the standpoint of the actual
19 record here, I dispute the Committee's findings
20 that all issues have been resolved, and that all
21 environmental impacts have been mitigated to the
22 level of insignificance. I strongly dispute that.
23 If there are fuel oils burned we have ample record
24 evidence that that will seriously impact the
25 public health issues here in San Diego.

1 And a one-time, \$1.2 million influx of
2 cash to buy a few buses that will last only five
3 years is hardly mitigation of particulate matter.

4 So I have asked this Committee to
5 condition full mitigation of particulate matter.
6 That request essentially has been ignored.

7 At this point I have renamed the PMPD to
8 politically motivated pusillanimous --

9 ASSOCIATE CHAIRMAN MOORE: I think
10 that's inappropriate. Let's have your comments on
11 the --

12 MS. DUNCAN: It may be inappropriate,
13 but this is a political decision that is coming
14 down here. I no longer believe I'm involved in a
15 bona fide administrative proceeding. And I have
16 not believed that since the end of the evidentiary
17 hearing.

18 ASSOCIATE CHAIRMAN MOORE: All right, --

19 MS. DUNCAN: Certainly under CEQA you're
20 required to protect the public health. So this
21 leads us into an issue that there was another
22 plant scheduled for hearing today, Huntington
23 Beach. It's been deferred.

24 I would respectfully state that that's
25 been deferred because of a newspaper article that

1 appeared that there is a huge public policy issue
2 on the table for that plant.

3 I assert it's on the table for this one,
4 as well, and all others that you are certifying.
5 And that is whether or not the power from these
6 plants can be made available to California. That
7 is particularly pertinent to this plant in this
8 situation, with the natural gas situation and the
9 resulting air quality impacts from fuel oil
10 burning.

11 We will need the power here in San Diego
12 to make sure that the emergency rooms are kept
13 open for people who will have trouble breathing
14 here with increased -- that was in my comments on
15 the PMPD. That you continue to ignore the serious
16 public health issues on the table for San Diegans
17 here, for whatever reason.

18 In the application, the application says
19 that the ISO had identified a need for another 300
20 megawatts in San Diego County. Well, San Diegans
21 took the price signals last year. We conserved
22 300 megawatts. That can be confirmed by calling
23 the San Diego Regional Energy Officer, Mr. Kurt
24 Kameron there will be happy to confirm for you
25 that took the price signals and we conserved.

1 That is a good thing that we have done.

2 I implore you to do two things. One, to
3 defer your decision on this plant until we have a
4 resolution of the availability of natural gas.
5 Number two, until there's a resolution of whether
6 or not this power is available to the State of
7 California and my community.

8 A third issue that still goes unresolved
9 that I raised in my brief, is the issue of water.
10 This same organization attempted to build a power
11 plant in Nevada and the Nevada water regulators
12 said no way, you export the power, you're
13 exporting water, and that's illegal in Nevada. No
14 way.

15 I have requested, and I will now make a
16 formal request that you defer your decision on
17 this power plant, as well as others before you,
18 until the exact same legal resolution that I
19 raised in my brief under article 10 of the State
20 Constitution, whether or not exporting power using
21 Californian's water is legal in this state.

22 I request that you put that before our
23 State Attorney General for a decision, and that
24 you defer any more certifications until that
25 issue, that fundamental issue for all

1 Californians, and especially southern
2 Californians, that have a hard time getting their
3 hands on water at a fair price gets resolved.

4 ASSOCIATE CHAIRMAN MOORE: All right,
5 I --

6 MS. DUNCAN: I believe these are
7 pertinent issues and I respectfully request that
8 you defer the decisions on any power plants before
9 you now until these huge public policy issues,
10 legal issues, are resolved for all Californians.

11 ASSOCIATE CHAIRMAN MOORE: Thank you, I
12 appreciate your comments. Mr. Claycomb, are you
13 on the line? Not. And not here in the audience?
14 All right.

15 With that I'm going to bring this matter
16 back to the Commissioners, and ask whether what's
17 your pleasure. We'll get this in a formal sense
18 so we can begin discussion on the item.
19 Commissioner Laurie.

20 COMMISSIONER LAURIE: Mr. Chairman, was
21 it your intent to seek additional public input
22 before or after any --

23 ASSOCIATE CHAIRMAN MOORE: I intended to
24 have additional public input once we had some kind
25 of a motion or an intention of the Commission on

1 the floor.

2 COMMISSIONER LAURIE: Mr. Chairman, I
3 move the adoption of the PMPD to be supplemented
4 by the errata before you. If there is a second on
5 that motion, I would like to offer comment,
6 please.

7 COMMISSIONER PERNELL: Second.

8 ASSOCIATE CHAIRMAN MOORE: Motion by
9 Commissioner Laurie to approve the PMPD with the
10 attached errata; seconded by Commissioner Pernell.
11 And we'll now open it for discussion.

12 Comments, Commissioner Laurie?

13 COMMISSIONER LAURIE: Thank you, Mr.
14 Chairman. I found these proceedings on the Otay
15 Mesa case to be personally rewarding from the
16 perspective that frankly it was handled by all
17 parties, by the applicant, by staff, by the
18 professional industrial intervenors and by the
19 public intervenors, in an extraordinarily
20 competent and professional manner.

21 I think this permitted a full discussion
22 of the evidence and a decision made accordingly.

23 I do not dispute the desire to have
24 these kinds of decisions to be made based upon
25 some integrated resource examination. Our process

1 has been, in part, designed to do that. In part,
2 not.

3 Clearly the planning functions of the
4 Energy Commission had been diminished somewhat. I
5 believe that that is changing. I believe further,
6 however, that we do not have the luxury of placing
7 a moratorium on new energy development pending the
8 creation of an integrated resource plan that
9 would, in fact, take years to create.

10 I do not believe that the people's
11 representatives desire that. I do not believe
12 that the people desire that. I believe the people
13 desire and deserve a full examination of the
14 impacts on this project to the extent that
15 evidence has been available.

16 And there were issues created. The
17 issue of gas capacity has been argued extensively.
18 The issue of air quality has been argued
19 extensively. The issue of water, and in fact all
20 of the other issues normally identified with a
21 power project have been addressed, in my view,
22 thoroughly and responded to.

23 Accordingly I am supportive of this
24 project, and am prepared to respond to any
25 additional questions that the Commission may have.

1 ASSOCIATE CHAIRMAN MOORE: Thank you,
2 Commissioner. With that, I am going to ask if
3 there are comments from the public who are here,
4 who I have no additional blue cards, other than
5 the intervenors who submitted them, so let me open
6 this and say, is there anyone here who would like
7 to offer us comments on the proposed decision
8 before us? There are none.

9 I'm going to bring this back to the
10 Commission and ask if there are additional
11 questions or comments by Commissioners. I have
12 one, but I'll defer.

13 Commissioner Pernell.

14 COMMISSIONER PERNELL: Mr. Chairman, I
15 would just echo what Commissioner Laurie has said,
16 and say that in response to one of the comments,
17 that we here at the dais, the Commissioners, and
18 especially the Committee on this case and all
19 cases, deal with facts, not public opinion, not
20 individual opinion, and certainly not newspaper
21 articles.

22 We're here to deal with the facts of
23 each and every case. Everybody is -- this is an
24 open-door process. You've heard me say this
25 before. Everyone is welcome to participate in the

1 process, to have opinions, but in terms of what
2 moves me as an individual Commissioner, it is the
3 facts of the case only.

4 Thank you, Mr. Chairman.

5 ASSOCIATE CHAIRMAN MOORE: Thank you,
6 Commissioner Pernell. Will the maker of the
7 motion entertain a modification to conditions that
8 were suggested by Mr. Varanini that would require
9 clean fuel backup for natural gas, and a
10 connection prior to operation to the North Baja
11 Pipeline?

12 COMMISSIONER LAURIE: No, sir. Those
13 requests have been made previously. The evidence
14 in the record, I felt, did not necessitate the
15 attachment of such conditions. And I am not
16 supportive of such.

17 ASSOCIATE CHAIRMAN MOORE: Let me ask in
18 a broader sense. Is there any other Commissioner
19 who would support those two additions to the
20 conditions?

21 All those in favor of the existing
22 motion signify by saying aye.

23 (Ayes.)

24 ASSOCIATE CHAIRMAN MOORE: Those
25 opposed? Motion carries four to zero.

1 MR. BLEES: Chairman Moore, --

2 ASSOCIATE CHAIRMAN MOORE: Yes.

3 MR. BLEES: -- may I make a brief
4 comment that reflects what --

5 ASSOCIATE CHAIRMAN MOORE: For those
6 listening in, this is Jonathan Blees, our counsel
7 for the Commission.

8 MR. BLEES: I think there are a couple
9 of important points of administrative law
10 regarding the record that reflect what
11 Commissioners Pernell and Laurie have said.

12 Obviously there has been a great deal of
13 discussion and evidentiary presentation on the
14 issues. Having reviewed the proposed decision, I
15 believe, along with the Committee and the Hearing
16 Officer, that there is a legally adequate
17 resolution of conflicts in the evidence and
18 conclusions on the issues and responses to
19 comments.

20 What I want to point out here is that
21 when the Commission is resolving issues,
22 resolution does not mean 100 percent certainty.
23 It does not mean a lack of conflict in the
24 evidence, nor does it mean a hundred percent
25 certainty that the action chosen is going to

1 happen, or is going to turn out to be correct.
2 In life there are few one hundred percent
3 certainties.

4 So to the extent that anybody is
5 suggesting that approval of this decision should
6 have awaited a hundred percent certainty on
7 anything that is certainly not legally required.

8 Second, Cabrillo presented a lot of
9 facts and analysis today. And to the extent that
10 that material has previously been presented in the
11 record, as Commissioner Laurie had reminded us
12 several times today, the Committee has already
13 dealt with those issues.

14 To the extent that that material was
15 presented new facts or new analysis, after the
16 close of the evidentiary record, it was certainly
17 within the Commission's legal prerogative to view
18 it as untimely. Thank you.

19 COMMISSIONER BOYD: Mr. Chairman.

20 ASSOCIATE CHAIRMAN MOORE: Thank you.
21 Commissioner Boyd.

22 COMMISSIONER BOYD: I'd like to make a
23 couple of comments about this issue that I didn't
24 feel were relevant to the vote, but are relevant
25 to the subject.

1 The comments have been made about the
2 fuel oil backup, and the undesirability of same.
3 I would concur with those who see fuel oil as not
4 the most desirable form of backup fuel. And I
5 would encourage this agency and others who are
6 affected by this whole issue and some are
7 listening and some follow these issues closely.

8 To continue to work to set up, you know,
9 new alternative fuel systems and sources, in the
10 event that those authorities who make decisions
11 about the need for backup fuel sources continue
12 that practice.

13 And so I would encourage the look at
14 fuels alternative to fuel oil, which admittedly
15 was something we tried to drive out of the
16 business of fueling power plants in California
17 long ago, as we did turn to natural gas. And I
18 know it's only the criticality of the reliability
19 of the system that leaves this hanging over our
20 head.

21 So I think it is something that I know
22 agencies recognize needs to be pursued. I know
23 those of us who work on a daily basis on the
24 future generation in California are quite
25 cognizant of the need for environmental standards

1 to be maintained, as well as fuel diversity, fuel
2 security and so on and so forth.

3 And to Ms. Hunter, who spoke about PM10
4 as a health hazard, let me say, air quality-wise,
5 I would certainly concur, having spent 20 years of
6 my life in that business.

7 But I would have to take exception with
8 the comment made, although these are not her
9 words, to the somewhat Mickey Mouse mitigation
10 measures that were offered. And just say that's a
11 little bit of an insult to the air quality
12 professionals and others who spent time looking at
13 the mitigation package and agreed with the
14 mitigation package. And did move into new
15 territory, and territory that will continue, I'm
16 sure, to be explored in the future regarding
17 protection of the public health, as well as
18 providing the needs of the society and the economy
19 and the citizens of the State of California.

20 So, I just think that one has to take
21 into account that there's a little stronger basis
22 in the validity of the mitigation measures than I
23 inferred from the comments that I heard.

24 That's all I have to say.

25 ASSOCIATE CHAIRMAN MOORE: Thank you.

1 Commissioner Laurie.

2 COMMISSIONER LAURIE: Just in closing,
3 Mr. Chairman, Susan Gefter was the Hearing Officer
4 on this project. I think her participation,
5 again, along with the, I consider, extraordinarily
6 talented presentations by all representatives of
7 the parties, made for a very good process.

8 I look forward to reviewing the record
9 should such an opportunity arise in the future by
10 sheer necessity.

11 ASSOCIATE CHAIRMAN MOORE: Well, just in
12 the way of final comment on this, I think, and I
13 can say this as I look forward in time to the near
14 future when I have to leave this Commission, but I
15 think that on reflection you're going to find that
16 Mr. Varanini's comments were very prescient on
17 this. And that going back to something that we
18 tossed out three and a half years ago, in terms of
19 trying to get an overall grip on the planning
20 needs and the integration of the systems,
21 transmission system, the gas system, power
22 production system, are going to be areas that we
23 need to revisit. We need to revisit them before
24 we have instituted or inculcated an embedded
25 reliance on natural gas that perhaps -- for

1 natural gas fired systems that perhaps cannot be
2 sustained over the long term.

3 And I encourage my colleagues who will
4 be continuing in this Commission to keep that in
5 mind. And to look out to see where the system can
6 go in its integrated fashion, and to imagine a
7 more interactive model that allows you to see the
8 pieces in play, as it were. Something we haven't
9 done for awhile; certainly haven't done it in the
10 context of the new economy, or the new power
11 regime that is out there.

12 And I would simply remind those who are
13 listening, for some of the other cases that are
14 up, that the Commissioners, especially the
15 Presiding Member, have an option where conditions
16 that are imposed or sought on behalf of the state,
17 that don't come about, whether because of some
18 legal technicality or because of some machination
19 of process, the Commissioners have the ability to
20 recommend denial of the project.

21 And that is possible in the future. So
22 it's one of the weapons that we have to make sure
23 that the process is adhered to and that the
24 greater public good is achieved over the long
25 term. And I suspect that we'll be revisiting that

1 possibility in future cases. Certainly I'll have
2 it in mind in some of the new cases that are
3 coming up, we'll be taking into account the
4 relationship of each individual project to the
5 system as a whole. I promise you.

6 With that, I'm going to turn to, and
7 thank all the participants for the hard work that
8 they did, tremendous hours that they put in, very
9 complex process, and I admire all of you for the
10 tenacity that you put into making this happen.

11 We're going to go to a little bit more
12 mundane items. Item 2 is the Association of
13 Energy Engineers. Possible approval of contract
14 500-00-010 for \$30,000 to cosponsor a Mexico
15 Energy Session at the Association of Energy
16 Engineers May 9-10 in San Diego. Tim.

17 MR. OLSON: Thank you very much,
18 Commissioners. We're asking your approval today
19 to -- we're seeking your approval to cosponsor
20 this conference which is our effort to organize a
21 concurrent session of this Association of Energy
22 Engineers Energy Management Congress. It's an
23 annual event that occurs on the west coast. It
24 just happens to be in San Diego this year.

25 And we're trying to address two

1 objectives here. One is to educate, inform owners
2 of industrial factories, commercial buildings in
3 Baja, California about the benefits of energy
4 efficiency and onsite generation.

5 And we're also trying to, our main goal
6 originally was to promote the export sales of
7 equipment and services from California firms to
8 Mexico, and to stimulate project development in
9 those Mequiladora factories.

10 We're expecting from this conference 100
11 attendees from Mexico who represent Mequiladora
12 factories, which is a generic term that refers to
13 a whole range of manufacturing, including assembly
14 plants, electronic assembly, food processing, a
15 whole range of different kind of manufacturing.

16 COMMISSIONER LAURIE: Mr. Chairman, --

17 ASSOCIATE CHAIRMAN MOORE: Commissioner
18 Laurie.

19 ASSOCIATE CHAIRMAN MOORE: -- and, Mr.
20 Olson, this is in your budget, is it not?

21 MR. OLSON: This is in our budget; the
22 \$30,000, \$5000 is from state funding, \$25,000 is
23 from a federal grant from the U.S. Department of
24 Energy.

25 COMMISSIONER LAURIE: Mr. Chairman,

1 Mr. Olson's job is economic development.
2 Participation in these conferences is an integral
3 part of that economic development program. It's
4 one of the few ways that the technological
5 resources available in California can be made
6 known to attendees.

7 I'm very supportive of the proposal, and
8 I would move the request.

9 ASSOCIATE CHAIRMAN MOORE: Is there a
10 second?

11 COMMISSIONER ROSENFELD: Second.

12 ASSOCIATE CHAIRMAN MOORE: Second by
13 Commissioner Rosenfeld. That's within the range
14 that we normally do approve for projects from our
15 own money.

16 All those in favor of the motion signify
17 by saying aye.

18 (Ayes.)

19 ASSOCIATE CHAIRMAN MOORE: Those
20 opposed? That motion carries.

21 Item 3 has been moved to the May 8th
22 business meeting.

23 Items 4 and 5 we're going to combine.
24 United Water Conservation District. The possible
25 approval of contract 500-00-008 for \$120,000 --

1 I'm sorry, 5 and 6. I went to 4 and 5. It's item
2 4. Contract 500-00-008 for \$120,000 for the
3 purchase of an alternative fuel emergency first
4 response vehicle. Peter.

5 MR. VILLANUEVA: Thank you. This is
6 basically a possible approval for purchase of an
7 alternative fuel fire rescue vehicle for the Lake
8 Piru Recreation Area.

9 This funding comes from member requests
10 which is basically pass-through funding.

11 ASSOCIATE CHAIRMAN MOORE: Is there a
12 motion?

13 COMMISSIONER PERNELL: Yes, Mr.
14 Chairman, I would move the item.

15 COMMISSIONER ROSENFELD: Second.

16 ASSOCIATE CHAIRMAN MOORE: Moved by
17 Commissioner Pernell, seconded by Commissioner
18 Rosenfeld. All those in favor signify by saying
19 aye.

20 (Ayes.)

21 ASSOCIATE CHAIRMAN MOORE: Motion
22 carries. Items 5 and 6 are collapsed together.
23 San Diego Regional Energy Office. Possible
24 approval of contract 400-00-025 for \$360,000 for
25 the AB-970 cool roof retrofit grant program.

1 And the Sacramento Tree Foundation, the
2 possible approval of contract 400-00-023 for
3 \$1,063,000 for the Ab-970 cool roof retrofit grant
4 program. And I would simply say --

5 COMMISSIONER PERNELL: Mr. Chairman.

6 ASSOCIATE CHAIRMAN MOORE: -- before we
7 get a motion, it's sure nice to see the tree
8 program being included in this for the value that
9 it brings to changing the microclimate of the
10 communities.

11 Commissioner Pernell.

12 COMMISSIONER PERNELL: I would concur
13 with that statement. Mr. Chairman, these items
14 have come before the Efficiency Committee. They
15 passed out of the Efficiency Committee. And if
16 there's any questions we have someone here that
17 can answer any questions.

18 But I would just say that AB-970 we have
19 moved some funds around to be able to accomplish
20 the goals of the legislation. And I would move
21 both items. And if there's any questions,
22 certainly Mr. Mills can answer any questions.

23 ASSOCIATE CHAIRMAN MOORE: Thank you.
24 Is there a second?

25 COMMISSIONER ROSENFELD: Second.

1 ASSOCIATE CHAIRMAN MOORE: Second by
2 Commissioner Rosenfeld. Is there discussion or
3 questions?

4 COMMISSIONER BOYD: Comment.

5 ASSOCIATE CHAIRMAN MOORE: Comment,
6 Commissioner Boyd.

7 COMMISSIONER BOYD: I would just like to
8 say, having known Commissioner Dr. Rosenfeld for a
9 long long time, having had discussions of cool
10 communities, cool roofs and et cetera, and having
11 known how hard he has pursued the subject, I know
12 it must make you feel reasonably well to finally
13 see some action being taken on something he has
14 championed for a long long time.

15 So I commend him for his perseverance.

16 COMMISSIONER ROSENFELD: Thank you.

17 ASSOCIATE CHAIRMAN MOORE: He stands
18 commended. All those in favor signify by saying
19 aye.

20 (Ayes.)

21 ASSOCIATE CHAIRMAN MOORE: Opposed?
22 That motion carries.

23 National Association of State Energy
24 Officials, NASEO. Approval of contract 400-00-040
25 for \$518,000 for two high energy performance

1 schools.

2 COMMISSIONER PERNELL: Mr. Chairman.

3 ASSOCIATE CHAIRMAN MOORE: Commissioner
4 Pernell.

5 COMMISSIONER PERNELL: This is another
6 item that is near and dear to my heart. Since
7 I've been here I've been supporting examples of
8 high performance buildings, sustainable buildings.
9 Also, we've been very supportive of school
10 facilities.

11 This particular project is a
12 collaboration of a number of states where we got
13 funds from NASEO to build a couple of
14 demonstration high performance schools.

15 And, again, if there's any questions I
16 have Mr. Garcia to answer them. But I am very
17 pleased to move this item.

18 COMMISSIONER ROSENFELD: Second.

19 ASSOCIATE CHAIRMAN MOORE: Second by
20 Commissioner Rosenfeld. Are there questions for
21 staff?

22 All those in favor signify by saying
23 aye.

24 (Ayes.)

25 ASSOCIATE CHAIRMAN MOORE: Those

1 opposed? That motion carries.

2 We have a series of technical contracts
3 that we maintain at the Commission in order to
4 provide background assistance for all of us in
5 doing our work. And this is a continuation of one
6 of those, the Aspen Environmental Group.

7 Contract 700-99-014, amendment 1. The
8 contract ceiling is \$10 million.

9 COMMISSIONER LAURIE: Mr. Chairman, this
10 is the contract for our technical experts that are
11 assisting in our siting cases. The additional
12 funds are needed to provide adequate staff to
13 service these cases. And I would move the
14 recommendation.

15 ASSOCIATE CHAIRMAN MOORE: Moved by
16 Commissioner Laurie. Is there a second?

17 COMMISSIONER ROSENFELD: Second.

18 ASSOCIATE CHAIRMAN MOORE: Second by
19 Commissioner Rosenfeld. Do you want to, Mr. Maul,
20 Ms. Fromm, do you want to make comments on this,
21 or --

22 MR. MAUL: I just would like to point
23 out two items. First, this is Sandra Fromm here,
24 who is our contract manager, and new person to our
25 division, and if you've not met her yet. We're

1 very happy to have her here.

2 Second, I want to point out that this is
3 a balanced response. Commission Staff have
4 requested the Department of Finance to handle this
5 kind of workload. We have been granted additional
6 staff positions to work on our siting case
7 workload which we have hired, as well as contract
8 dollars to make sure that we handle the peak
9 workload.

10 I'd like to point out that Hamid
11 Rastigar is in the audience, the President of
12 Aspen Environmental Group, along with Tom Murphy,
13 the Deputy Manager at Aspen Environmental Group.
14 And we're very appreciative of the work that that
15 company has provided to staff.

16 Without this contract and without their
17 staff providing high quality work, we would not
18 have been able to provide to you, the
19 Commissioners, or to the public the products and
20 the analyses that we have been able to do on time
21 without extreme cost to staff with overtime and
22 morale. So we're very appreciative of them
23 helping us with our peak workload issues.

24 ASSOCIATE CHAIRMAN MOORE: So, in
25 approving this we're approving money, but not

1 people. We still don't have people to fill all
2 these positions we've got, in essence, the ability
3 to get them, but we don't have people?

4 MR. MAUL: We have requested Department
5 of Finance additional positions to handle our
6 workload. They have granted them to us. But we
7 never have requested of Finance enough positions
8 to handle all the workload that comes to us in the
9 siting program.

10 Because the nature of hiring staff,
11 training staff and bringing them on board, we
12 believe this is a temporary workload that will
13 subside in the next couple of years, and therefore
14 it's more appropriate to contract for that
15 workload for the peak version, peak form of that
16 workload, and to hire staff for the baseload
17 portion of that workload --

18 ASSOCIATE CHAIRMAN MOORE: And are we
19 bound by state definitions of salary or personnel
20 category? In other words, are we allowed to use
21 this to hire the very best people that we can
22 regardless of what an equivalent or co-equal state
23 classification would be?

24 MR. MAUL: We're bound by the contract
25 terms. This was competitively bid, so we did

1 first put out a request for qualifications to
2 submit -- have bidders submit --

3 ASSOCIATE CHAIRMAN MOORE: I'm asking my
4 question badly. Let me go to -- let's say that we
5 want -- Commissioner Laurie needs someone to work
6 with him on part of a siting workload, and has
7 identified an individual who would typically come
8 in at a very senior administration level, for
9 instance, can he do that through the contract?

10 MR. MAUL: Generally not because the
11 contract is designed to assist staff. And the
12 contractors are an extension of staff. Therefore,
13 working for the staff there would be a separation,
14 you know, an ex parte --

15 ASSOCIATE CHAIRMAN MOORE: So you don't
16 believe that there's the ability to use this
17 contract to have Aspen acquire assistants that
18 would be made available to the Committees, for
19 instance, at senior or very technical levels?

20 MR. MAUL: We believe that would be an
21 inappropriate use of the staff for that. Just as
22 you can't do that now, we don't believe the
23 contract should be used that way, either.

24 ASSOCIATE CHAIRMAN MOORE: Mr. Blees,
25 has the Chief Counsel's Office looked at, or

1 reviewed this contract, where we can get some
2 concurrence on what Mr. Maul is saying as far as
3 the use and ability to have some broken field
4 running for the Commissioners here, as well?

5 MR. BLEES: Has the question been posed
6 before, Mr. Chairman?

7 ASSOCIATE CHAIRMAN MOORE: I don't know.
8 I actually don't know the answer to that.

9 COMMISSIONER LAURIE: I haven't posed
10 it.

11 MR. BLEES: My office has reviewed the
12 contract. I do not know the answer to your
13 question. I will have the attorney who reviewed
14 the contract get back to you and the rest of the
15 Commissioners as soon as possible.

16 ASSOCIATE CHAIRMAN MOORE: Well, I think
17 clearly we'd like to have the contract, to get as
18 much flexibility for the Commission to keep
19 running. I think, I mean I'm assuming that I'm
20 reading my colleagues correctly on this.

21 But, frankly, there may be applications
22 of this where the Commissioners would like to have
23 some additional expertise, or perhaps the
24 Administrative Officer, as well. And I'd like to
25 know, and I believe my colleagues will share this,

1 I'd like to know the flexibility that's implied
2 within this as far as limits that might be imposed
3 by personnel classifications or categories.

4 So perhaps we can just get a report back
5 to tell us how this would --

6 MR. BLEES: Mr. Chairman, I think that
7 we, in terms of this particular contract, that
8 this is for the ongoing operations of the staff. I
9 think that there are other funds that are
10 available for special circumstances that you may
11 have, you know, in terms of siting.

12 COMMISSIONER PERNELL: Let me ask the
13 question, if this is for ongoing operation of
14 staff, does that mean that whomever a consultant
15 can't be hired for no higher salary than the staff
16 that they're working for? Is that what I'm
17 understanding?

18 MR. MAUL: No, the terms of the contract
19 were such that we did a prevailing wage survey by
20 the public agencies and private organizations that
21 contract for similar activities. We've
22 established what's an acceptable hourly rate under
23 the terms of this contract, and that's the maximum
24 that we'll pay in this contract.

25 COMMISSIONER LAURIE: But, David, the

1 hourly rate of our contractors has got to be
2 higher than the hourly rate of our employees.

3 MR. MAUL: The hourly rate is much
4 higher if you look at a fully loaded rate of a
5 staff employee for an entire year of benefits,
6 salaries and everything else, it's approximately
7 \$90,000. If you look at the contract rate
8 equivalent, if you had a person working, doing the
9 same job the state employee did, fully loaded, all
10 benefits and everything else, it's about \$170,000.

11 So, it costs us much more to get the
12 same work done via a contract than with the state
13 employees.

14 ASSOCIATE CHAIRMAN MOORE: Right, that's
15 the whole reason that you're using the contract on
16 a limited basis, you're bringing it in for a
17 limited amount of time and you --

18 MR. MAUL: That's right, that's why we
19 try to hire as many employees as we can to cover
20 the baseload work that is on a permanent basis.
21 We only use the contractor for a limited term
22 analyses.

23 ASSOCIATE CHAIRMAN MOORE: Which
24 suggests very special expertise being applied in
25 limited circumstances?

1 MR. MAUL: Right. In response to your
2 earlier question as Mr. Larson had said, there are
3 other funds available if your assistance is needed
4 for the peaking power plant cases we have ongoing
5 right now that are covered under the Governor's
6 Executive Order, we are exempt from certain
7 contract provisions there. And there is money
8 available to handle certain limited contracting
9 provisions there.

10 COMMISSIONER LAURIE: Well, in response
11 to -- first of all, I support Commissioner Moore's
12 inquiry. And the point goes to their reliance
13 upon -- the reliance by the Commissioners in
14 making their decision-making on cases being the
15 evidentiary record, and to the Hearing Officers,
16 Hearing Officers or lawyers.

17 But I think Commissioner Moore is
18 talking about other specific expertise that may be
19 helpful. Not to decide individual case questions,
20 that is gaining facts or evidence outside the
21 record, but for the overall education of the
22 Commissioners or the Executive Officer.

23 Having that kind of expertise available.
24 And I'd certainly be interested in pursuing that
25 question.

1 On the issue of this kind of particular
2 contract, certainly Commissioner Moore, Mr.
3 Chairman, in your experience as a county
4 supervisor, you've experienced the fact that in
5 local land use decision-making there are peaks and
6 valleys, depending upon when your general plan is
7 adopted, depending upon the exigencies of the
8 local economy.

9 And so you do want to minimize your
10 permanent staffing in your planning department,
11 but maintain that baseload staffing. And then
12 contract out when you're in the peaks. Of course,
13 we're going to be in the peak for a couple more
14 years.

15 So, I think the idea behind this
16 contract is, in fact, a proper one.

17 ASSOCIATE CHAIRMAN MOORE: Thank you.

18 COMMISSIONER PERNELL: Mr. Chairman, --

19 ASSOCIATE CHAIRMAN MOORE: Commissioner
20 Pernell.

21 COMMISSIONER PERNELL: -- I'm certainly
22 in favor of the item, but I think this raises a
23 larger question of policy and how we attract
24 professionals that will allow us to help in our
25 workload, whether that be siting or whether that

1 be some other, efficiency or some other category,
2 that the Commission has statutory authority to do.

3 So, what I'd like to do is maybe explore
4 this with our legal staff and Executive Director's
5 Office so that we will have some latitude on
6 hiring professionals to help us get this work
7 done.

8 ASSOCIATE CHAIRMAN MOORE: Well, I
9 suspect we're going to get just such a report
10 back, and we'll ask our Assistant Executive
11 Officer to help us get that.

12 MR. SMITH: Yes, we'll do that.

13 ASSOCIATE CHAIRMAN MOORE: Thank you.

14 COMMISSIONER PERNELL: Thank you.

15 ASSOCIATE CHAIRMAN MOORE: We have a
16 motion and second on the floor. All those in
17 favor signify by saying aye.

18 (Ayes.)

19 ASSOCIATE CHAIRMAN MOORE: Those
20 opposed? That motion carries.

21 We've pulled item 9 and put it over one
22 week. That's the Huntington Beach Generating
23 Station Retool Project. That's docket 00-AFC-13.
24 And that matter will come back before us in one
25 week.

1 Items 10 and 11 on the Rio Linda/Elverta
2 Power project. First item is to consider the
3 Executive Director's data adequacy recommendation
4 for the application for certification. And, Mr.
5 Shaw, I believe that you will present that for us.

6 And then I have a number of folks who
7 have submitted blue cards who would like to
8 comment on this item.

9 MR. SHAW: Good morning, Commissioners
10 and audience, my name is Lance Shaw. Co-counsel
11 is Caryn Holmes sitting in the audience, and
12 Darcie Houck to my left.

13 On March 26th the applicant, FPL Energy
14 Sacramento Power LLC, submitted the supplement to
15 its AFC. Our staff has reviewed it and found it
16 to be data adequate.

17 There was one item in the Executive
18 Director's letter that mentioned the completeness
19 letter from the Air Quality Management District.
20 We had verbal that it would be in place, and it
21 was signed on the 11th, the day after the
22 Executive Director signed it, it has been docketed
23 and there on the back table.

24 So we recommend that you find --

25 ASSOCIATE CHAIRMAN MOORE: Copies of

1 that docket submission are on the back table?

2 MR. SHAW: That is correct.

3 ASSOCIATE CHAIRMAN MOORE: All right.

4 MR. SHAW: And we recommend that you
5 find it data adequate.

6 ASSOCIATE CHAIRMAN MOORE: All right,
7 let me ask for brief comments from the applicant,
8 if they'd like to introduce themselves. And then
9 we'll turn to public comment.

10 MR. ROSSKNECHT: My name is Tim
11 Rossknecht. I'm the Project Director for the
12 project, from FPL Energy. This is Jocelyn
13 Thompson, she's my lead counsel.

14 Our only comments are we're thankful of
15 the staff, time that they spent; pleased that they
16 found us adequate. Anxious to get started on the
17 process, and in particular, I guess the next month
18 known in the process as the public information
19 meeting in the community. And we're anxious to
20 have the date set for that and to get going.

21 ASSOCIATE CHAIRMAN MOORE: I understand.
22 All right. Now, I've got cards here from folks
23 who would like to testify. Let me tell you, at
24 the risk of creating some consternation in the
25 mind of the public here, there issue before us is

1 whether or not the matter is data adequate.

2 Whether or not it can then go to a Committee, be
3 assigned to a Committee and be heard in public.

4 The matter is not before this
5 Commission. We don't have any information, any
6 facts in front of us. The only thing we have is a
7 request to be considered by a Committee for a
8 possible operating certificate in the future.

9 So, while I'll be very happy to call you
10 and ask for your comments, I'm going to ask that
11 you confine them to the matter, the very narrow
12 matter before us, which is whether or not the
13 staff did the right thing in recommending to us
14 that this project has enough data put forward
15 today for us to assign a Committee to hear it in
16 the future.

17 So, if any of that changes your mind
18 about what you'd like to say to us, then you can
19 let us know. But, again, I have a request, for
20 instance, for a presentation on power plant
21 problems in Rio Linda. While every one of us is
22 concerned and interested in that kind of an item,
23 it's not germane to today's hearing. That is
24 something that would probably come up in front of
25 the Committee or certainly following a Committee

1 recommendation with regard to something, a plant
2 like this is in the future, it might be
3 appropriate at a future Commission meeting. But
4 not today.

5 The matter before us today is the matter
6 of the data adequacy for this proposed project.
7 With that, Walk Boatwright, do you want to address
8 us on the issue of data adequacy?

9 Good morning.

10 MR. BOATWRIGHT: Good morning. You guys
11 look like you haven't smiled all morning except
12 for Commissioner Rosenfeld, I saw him smile once.

13 ASSOCIATE CHAIRMAN MOORE: Well, I
14 slipped him a joke during the first part of the
15 meeting. He's just getting around to reading it.

16 MR. BOATWRIGHT: Yeah, these are some
17 serious matters, I know, but it's sure good to
18 smile once in awhile. But I'm glad we have a
19 couple barriers here between us.

20 (Laughter.)

21 ASSOCIATE CHAIRMAN MOORE: Okay. I'm
22 not sure how to take that, but go ahead.

23 MR. BOATWRIGHT: My name is Walter
24 Boatwright and I am here to express a couple of
25 concerns about data adequacy.

1 I've been a member of the Rio Linda
2 community for about 30 years; now retired. And
3 during that time I've experienced whatever God and
4 man had to throw at me for water. We've had
5 sometimes too much water, and sometimes not
6 enough.

7 I think that the application doesn't
8 adequately address the many water issues that are
9 confronting us there in Rio Linda and Elverta.
10 Consider the water quality. I'm convinced by the
11 applicant's inadequate -- I'm concerned by this
12 applicant's inadequate examination of water
13 quality issues.

14 Issues not adequately addressed range
15 from dewatering of our local private wells to the
16 spread of the contaminated groundwater plume from
17 McClellan Air Force Base.

18 I'm concerned that no surface water is
19 available, and yet the Florida Power & Light is
20 unaware of a previous Energy Commission ruling
21 regarding an earlier similar application. As you
22 may remember, the original SEPCO site, the same
23 site proposed in this application, was the subject
24 of an Energy Commission ruling that said, quote,
25 "No groundwater is to be used for the SEPCO

1 project." Unquote.

2 Another area not sufficiently addressed
3 is drainage, an annual worry that I have. I live
4 on a corner. I've got two drain ditches. And I'm
5 looking at the flood levels consistently every
6 winter.

7 Despite the best efforts of Sacramento
8 County administrators, we still have flooding on a
9 regular basis in the winter in Rio Linda and
10 Elverta.

11 This application does not adequately
12 address the geological problem, or hazard, if you
13 wish, that the proposed facility faces. In other
14 words, the site is in a flood plane. And the
15 flood level is higher than the proposed facility's
16 floor.

17 I look forward to hearing how the
18 applicant is going to resolve these water related
19 issues so that my friends and I can live our
20 remaining years in our community with pure water
21 and plenty of water.

22 Thank you very much.

23 ASSOCIATE CHAIRMAN MOORE: Thank you,
24 sir.

25 COMMISSIONER PERNELL: Thank you.

1 ASSOCIATE CHAIRMAN MOORE: Let me ask,
2 Mr. Culley, have I got that right? Yes, Mr.
3 Culley. Good morning.

4 MR. CULLEY: Good morning. My name is
5 Jeff Culley. I'm the Co-chair of the Florida
6 Power and Light Liaison Committee, which is a
7 coalition of Rio Linda and Elverta residents and
8 community organizations.

9 Committee members represent our
10 community, schools, library association, Parks and
11 Recreation District, Water District, Chamber of
12 Commerce, among others.

13 We're the community members who will
14 bear the burdens of construction and operation of
15 the proposed power plant, be kept awake at night,
16 et cetera. But we have numerous concerns
17 regarding the inadequacy of the data supporting
18 application to build a power plant in our area.

19 Our community concerns include issues
20 regarding the following: Air quality. Community
21 members note with concern that the application
22 fails to address both Florida Power and Light's
23 source of pollution offsets, and this particular
24 area microclimate which features both a heavy
25 winter fog and summer inversion layer.

1 Secondly, biological resources. The
2 application does not adequately address the impact
3 the power plant would have on our area's
4 environmental heritage, the area's vernal pools,
5 federally protected burrowing owls and other
6 native birds, including the red-tail and
7 Swainten's hawk.

8 Third, noise. The application also does
9 not adequately address the mitigation process to
10 overcome the around-the-clock noise generated by
11 the plant's operations, which will directly affect
12 a dozen or more residents very near to the plant
13 site.

14 Furthermore, the importance of the issue
15 of noise pollution is only heightened by a recent
16 scientific study demonstrating an inverse
17 correlation between background noise and students'
18 test scores. As background noise rose, test
19 scores declined. This application does not
20 adequately address the impact on the students of
21 Rio Linda, the two schools.

22 Four, traffic and transportation.
23 Traffic is already a serious issue at the
24 intersection of Elverta and East Levee Roads. The
25 Florida Power and Light application fails to

1 address the additional burden Florida Power and
2 Light will place on our transportation
3 infrastructure. Furthermore, the plan completely
4 fails to address the future of West Sixth Street,
5 a future transit corridor that runs alongside and
6 through the site of the power plant.

7 In the area of visual, a 130-foot tall
8 water tower serves as the visual focal point of
9 our community. It will be dwarfed by two massive
10 exhaust stacks, each 170 feet tall. And ten 60-
11 foot tall cooling towers.

12 This proposal inadequately addresses how
13 the impact of this very noticeable industrial
14 feature of our residential rural community will be
15 mitigated. Furthermore, the proposal does not
16 address visual pollution caused by the facility's
17 24-hour a day lighting.

18 Furthermore, our community believes that
19 the application is incomplete in the following
20 additional areas, such as cultural resources,
21 geological hazards, plant reliability,
22 socioeconomic, soils and water resources.

23 These are some of the concerns that the
24 Florida Power and Light Liaison Committee and the
25 residents and community organizations of Rio Linda

1 and Elverta.

2 We look forward to working with Florida
3 Power and Light during the process, in an effort
4 to diminish the number of burdens our community
5 will face.

6 ASSOCIATE CHAIRMAN MOORE: Thank you,
7 sir. Could you spell your name for the record,
8 please?

9 MR. CULLEY: C-u-l-l-e-y.

10 ASSOCIATE CHAIRMAN MOORE: Thank you,
11 sir.

12 MR. CULLEY: Thank you.

13 ASSOCIATE CHAIRMAN MOORE: Chris
14 Chaddock. Good morning, sir.

15 MR. CHADDOCK: Good morning,
16 Commissioners. My name is Chris Chaddock. I own
17 property next to, and I live at 7401 West Sixth
18 Street, which is adjacent to the proposed FPL
19 site.

20 It is a major concern to me that this
21 AFC is greatly data inadequate. The first issue,
22 they're using a seven-year-old zoning agreement
23 which strictly prohibits the site for use as a
24 power plant only site. And under this restriction
25 and guidelines it's specifically stated not to use

1 local groundwater for the site that's being
2 proposed.

3 According to the meeting that I went to
4 for the Rio Linda Water Board on April 16th, there
5 still has not been a will-serve letter from the
6 Rio Linda Water District directly to the FPL
7 Energy Sacramento Power LLC, which they were
8 specifically asked for on at least two occasions.

9 They are in their service area, so that
10 they're, I think, underneath utility regulations,
11 could be required to serve it, but I think this
12 AFC specifically asks for a will-serve letter.

13 Number two. They did not adequately
14 address since the SEPCO siting procedures, a 1998
15 County resolution 980683. It's the policy plan
16 for the Rio Linda/Elverta community. There's at
17 least 20 violations that if they would have read
18 this document that they would not have bought the
19 SEPCO site because of major zoning issues in the
20 community plan, as in the siting regulations
21 caused for it to be in an area that's proposed for
22 this type of information.

23 Under appendix B of the siting
24 regulations, land use, 3A, number 2, Noise 4A,
25 it's data inadequate. Traffic and transportation,

1 ANB, they left out, for some reason, the missing
2 data on West Sixth Street, which the plant sites
3 on from a two- to a four-lane change, a 60-foot
4 easement that goes directly through the power
5 plant, and the completion of West Sixth Street
6 through the property plant. These were left out
7 of their AFC under traffic.

8 Visual resources, 6B, regarding the view
9 from historical house directly in front of the
10 proposed power plant. This house is over 100
11 years old. It was moved on logs. And one of the
12 pictures in the AFC is actually taken from their
13 front driveway.

14 Socioeconomics, 7-6, how will the new
15 gas supply line into the community be expanded to
16 benefit the community. Under 7B-3, increase of
17 new power source in relationship to the new sphere
18 of influence of the County to the adjacent
19 property.

20 Under air quality, 8, the exhausted air
21 quality credits of the Sacramento Air Quality
22 District. 8G, missing three years, previous three
23 years data in regards to 8G. 8H, the 1995
24 meteorological and air quality data was submitted.
25 I think it's supposed to be within one year for

1 the plant site.

2 8H-2, they're using 16-year-old data,
3 not representative of the site today from the
4 previous SEPCO site. 8I, FPL Rio Linda Power
5 project name appears on the test results for PM10
6 1988 CO emissions, construction emissions 1985.
7 NO2 1985, the PM24 data 1987, SO2 data 1989. And
8 under the AFC, K8 the CO2 emissions for 1987, the
9 PM10s and the SO2s for 1985.

10 Under health risk I'm greatly concerned
11 about the accuracy of the acute and the chronic
12 exposure data. Naphthalene -- I have trouble
13 reading a lot of these here, names -- polycyclic
14 Arom, HC, ethyl benzene, butadiene 1, 3
15 acetaldehyde; acrolein; benzene; formaldehyde; N-
16 hexane; propylene oxide, toluene, xylene, arsenic
17 and chromium (HEX).

18 These are some of the health risks that
19 I don't feel that they've addressed in their
20 underneath health risk - 12. There are some
21 things like cadmium, arsenic, beryllium, lead,
22 mercury in root uptake in crops that I'm not sure
23 how to understand, or the half life of
24 contaminants found in breast milk listed in their
25 AFC.

1 These are just some of the missing data
2 from the AFC that I have recognized. And this is
3 from a neighbor, hoping to work out these
4 different issues insuring FPL's environmental
5 commitment of people making a natural choice.

6 Thank you for your time.

7 COMMISSIONER LAURIE: Thank you, Mr.
8 Chaddock.

9 ASSOCIATE CHAIRMAN MOORE: Thank you
10 very much. Charles Goedor.

11 MR. GORDON: I'm Charles Gordon, a
12 resident of Rio Linda. I will not be as elegant
13 in my presentation as the last two speakers. But
14 I am concerned about air quality.

15 I live at 100 Elkhorn Boulevard, between
16 two and three miles south of this power plant.
17 This power plant will be putting out a lot of
18 moisture in their cooling towers, a lot of
19 particulate matter, just plain what I think most
20 of us laymen call smog.

21 As it is right now I haven't seen
22 anything that says that this smog is going to be
23 offset by other sources of where they're going to
24 buy credits or anything. And Sacramento now, I
25 think last year, I'm not sure how many days we

1 went through smog alerts here in Sacramento, of
2 where seniors, like myself and my wife, were
3 advised to stay indoors because we wouldn't be
4 able to breathe healthy air. I'm concerned at
5 just how they're going to address this concern in
6 the community.

7 Seems to me like we are being asked to
8 suffer heavier smog, more noise and other things
9 that are not particularly healthful. And when I
10 asked an FPL representative at a meeting that I
11 attended where the power that they generate would
12 go, he said the western grid.

13 Well, the way I understand it, the
14 western grid goes from the Mexican border to the
15 Canadian border. And possibly as far east as the
16 Great Plains.

17 Well, I would like to know why and how
18 they can justify us putting up with this. I know
19 this is a little off of the subject. And where
20 California, let alone the local community, may not
21 even benefit from the power plant.

22 Thank you.

23 ASSOCIATE CHAIRMAN MOORE: Thank you,
24 sir.

25 COMMISSIONER PERNELL: Thank you.

1 ASSOCIATE CHAIRMAN MOORE: Patti
2 Camatti. I hope I didn't do an injustice to your
3 name.

4 MS. CAMATTI: Good morning. I'm also a
5 property owner and a resident to the proposed
6 power plant, and also a concerned citizen for Rio
7 Linda community and Sacramento County.

8 To say that I understand all the mumbo
9 jumbo in the technical mounds of paperwork that
10 I've waded through is a joke. The information
11 that I was able to understand and do research up
12 to this point on makes me wonder why we're even
13 here reviewing and spending time on this
14 application at this point.

15 The zoning agreement, as agreed, they're
16 written by the County Supervisors, from what I
17 read, does not conform to what is being proposed
18 now. Therefore, the proper process that I appear
19 to recognize would require another public hearing
20 to determine if this property zoning is still
21 within the community plan.

22 Since the initial agreement of the
23 County and community have spent a great deal of
24 time and money in cleaning up this particular
25 area, which has included even shutting down

1 businesses that have been in operation in that
2 area prior to this original zoning agreement.

3 I can only state from personal
4 experience that when I go to the planning
5 department to obtain a permit for a safety light
6 on my own property I have to be prepared to have
7 obtained all that they require and have all the
8 facts before me to have a permit issued.

9 What I have seen of the documents
10 provided to all of us from this applicant appears
11 to be old, out of date, and borrowed from another
12 company, which was a completely different design.

13 The few documents that they did do have
14 errors that even my untrained eye and limited
15 knowledge of the subject matter have been able to
16 uncover.

17 If this company operates its facilities
18 as it does its initial unveiling, it's stating to
19 do six projects within California, leaves me a
20 little bit concerned of how they're actually going
21 to operate their own facilities.

22 If the state and county really want to
23 assist its people and provide for a future, I
24 submit that this application be denied, this site,
25 and consider an alternative such as Mather Air

1 Force Base. Mather Air Force Base provides the
2 industrial usage, the gas lines, surface water,
3 station lines. It would assist our own local
4 company, SMUD, who has been here to service
5 California throughout.

6 The proposed site, as it is right now,
7 needs gas lines to run across our Sacramento
8 waterways, across a fault line. It doesn't let
9 the community know if we're able to utilize that
10 gas line once it gets there. The gas line that
11 was proposed was proposed to be through PG&E, who
12 is now bankrupt. So how do we deal with that?

13 Those are just a few of the issues that
14 I've uncovered.

15 On the personal side of this I find I'm
16 having difficulty deciding if I should even plant
17 my lilac bushes I bought a year ago. It had been
18 trying to acclimate to that area.

19 I'm concerned about the Natomas
20 community and all the development that's being
21 built up around that area. Are the new home
22 buyers being informed by the developers that
23 there's a proposed power plant going into this
24 area?

25 As I know, when I talked to the

1 developers, they're not even informing people
2 about Taylor Fertilizer Plant, which is a major
3 concern.

4 I also wonder how it's affecting my
5 neighbors. She's 70 years old. She was born and
6 raised in the house that's across from the site.
7 And it's not even mentioned in their paperwork.
8 It's amazing to me.

9 And that's all I've got to say. Thank
10 you for listening.

11 ASSOCIATE CHAIRMAN MOORE: Thank you
12 very much. Is there anyone else who would like to
13 address us on this who didn't submit our blue card
14 to us?

15 MS. KRAPCEVICH: Yes.

16 ASSOCIATE CHAIRMAN MOORE: Public
17 Adviser.

18 MS. KRAPCEVICH: This is Marija
19 Krapceovich, the Associate Public Adviser. And I
20 was handed this by Jeannie Stutes. She had to
21 leave, unfortunately, and based on what you said
22 prior to this, that any kind of opposition to the
23 plant be held over to the appropriate type of
24 hearing.

25 I don't know if she had prepared a

1 comment in regards to the data adequacy. However,
2 just for the record, her name is Jeannie Stutes,
3 and she had made a blue comment card.

4 ASSOCIATE CHAIRMAN MOORE: Thank you.
5 Let me bring this back to the Commission.
6 Commissioners, you have the report of data
7 adequacy submitted by staff and a recommendation
8 to find this data adequate to allow us to assign a
9 Committee.

10 What's your pleasure?

11 COMMISSIONER LAURIE: Mr. Chairman, I
12 think the issues that have been brought up are
13 valid issues. Certainly the data adequacy report
14 merely represents the data submitted by the
15 applicant, and is not controverted evidence.

16 What will follow will be the full
17 analysis by staff and evidentiary hearings, at
18 which time the evidence submitted by the applicant
19 may or may not be accepted as true. But, in any
20 case, impacts determined and mitigation measures
21 proposed.

22 I have no information in front of me
23 that would suggest that the information required
24 to be as part of the application is insufficient.
25 And I have no information in front of me that

1 would suggest that it's not appropriate for us to
2 move forward in the process at this time.

3 I thus move the recommendation of the
4 Executive Director to find this project data
5 adequate.

6 ASSOCIATE CHAIRMAN MOORE: Is there a
7 second?

8 COMMISSIONER PERNELL: Second.

9 ASSOCIATE CHAIRMAN MOORE: Second by
10 Commissioner Pernell. I'd just make one comment
11 that should this motion pass that the question of
12 land use, which it seems to me can be a fatal
13 flaw, will have to be obviously examined. It's a
14 point that we all have to remember in our
15 relationship with local government, we'll have to
16 take into account as we look at this.

17 All those in favor on the motion signify
18 by saying aye.

19 (Ayes.)

20 ASSOCIATE CHAIRMAN MOORE: Those
21 opposed? That motion carries. We need to assign
22 a Committee. And I propose that the Committee be
23 composed of Commissioner Rosenfeld as lead
24 Commissioner, and Commissioner Moore as the
25 Associate Member.

1 COMMISSIONER LAURIE: I'd move the
2 recommendation.

3 COMMISSIONER PERNELL: Second.

4 ASSOCIATE CHAIRMAN MOORE: Moved,
5 seconded. All those in favor signify by saying
6 aye.

7 (Ayes.)

8 ASSOCIATE CHAIRMAN MOORE: The motion
9 carries.

10 COMMISSIONER PERNELL: Mr. Chairman, --

11 ASSOCIATE CHAIRMAN MOORE: Commissioner
12 Pernell.

13 COMMISSIONER PERNELL: -- if I may, on
14 this item, encourage the community and other
15 interested people to stay engaged in the process.
16 Just simply formally put out there your
17 participation in working with staff, it's going to
18 be essential. And so I would encourage you to
19 continue to be engaged in the process, and not let
20 this vote be a deterrent.

21 COMMISSIONER LAURIE: And, Mr. Chairman,
22 I would concur with your expressed concern over
23 the land use issue. Regardless of what eventually
24 comes back to the Committee, the City has to take
25 action on any inconsistency before the matter is

1 finalized. And that could be a convoluted
2 process.

3 So I would urge staff to treat that as
4 an absolute priority and determine what needs to
5 be done. And attach appropriate staff to it.

6 ASSOCIATE CHAIRMAN MOORE: County in
7 this case, yes.

8 Item 12, solar energy and distributed
9 generation grant program. Possible approval of
10 the solar energy and distributed generation grant
11 program guidelines, and the notice of availability
12 and the implementation of the energy program
13 legislation.

14 And, counselor, Mr. Herrera, and Melinda
15 Merritt are here to briefly introduce the item for
16 us, along with -- you have a submission from the
17 staff that summarizes what the recommendations
18 are?

19 MR. HERRERA: Yes, good morning,
20 Commissioner Moore, and Commissioners. I'm
21 Gabriel Herrera. I'm with the Chief Counsel's
22 Office. I'm here with Melinda Merritt and we're
23 going to take a tag-team approach to this item.

24 I'm going to briefly introduce it, and
25 then Melinda is going to give you a summary of

1 what the program entails and who's eligible, as
2 well as suggested revisions to the proposed
3 guidelines that were issued on March 9th. Those
4 are changes that the Electricity and Natural Gas
5 Committee has approved based on public comments
6 that we received.

7 These proposed guidelines are being
8 suggested for adoption by the Commission pursuant
9 to SB-1345 which codified in the Public Resources
10 Code two sections. One is 25619, the other one is
11 25620.10, and each of those sections direct the
12 Commission to develop a grant program to fund
13 solar energy systems and to fund distributed
14 generation systems.

15 We have done that. We've worked with
16 stakeholders and come up with some suggested
17 guidelines to implement the program. We sent
18 those out for public comment on March 9th under
19 the Committee's letterhead notification. And we
20 did receive some comments back.

21 And we'll walk you through each of those
22 comments, because we're going to be proposing some
23 suggested changes to the guidelines as initially
24 sent out on the 9th.

25 And with that let me just turn it over

1 to Melinda Merritt. She can briefly explain what
2 the program involves, and then each of the
3 suggested changes.

4 MS. MERRITT: Okay, for the record I'm
5 Melinda Merritt, Staff Project Manager for
6 implementing this solar energy and distributed
7 generation grant program.

8 We provided a summary, a brief summary
9 of the grant program, as it's been proposed, and
10 also reflecting requirements contained in the
11 staff's summary. We've also provided a brief
12 summary of the recommended revisions to the March
13 9th proposed guidelines. These materials have all
14 been available to parties in the foyer.

15 I can briefly go over the kind of basic,
16 the highlights of the program, the matters as to
17 who's eligible, the systems that are eligible, et
18 cetera, and Gabe has already pretty much taken you
19 through most of the implementation activities that
20 we have been undertaking in the past few months.

21 This program is intended to assist
22 California residents in offsetting the cost of
23 purchasing and installing solar energy systems
24 primarily for domestic water heating purposes, and
25 a select group of distributed generation

1 technologies.

2 Who's eligible are all California
3 residents regardless of service areas --

4 ASSOCIATE CHAIRMAN MOORE: Melinda, you
5 know, let me try this. Let me ask if any of the
6 members have questions on this. We've all had --

7 COMMISSIONER LAURIE: Mr. Chairman, I'm
8 very familiar with the proposal, very supportive
9 of the proposal. And I would move the
10 recommendation.

11 ASSOCIATE CHAIRMAN MOORE: Thank you.
12 There is a motion --

13 COMMISSIONER ROSENFELD: Second.

14 ASSOCIATE CHAIRMAN MOORE: Second by
15 Commissioner Rosenfeld. It's something that we've
16 needed for a long time, glad to be implementing
17 it --

18 MR. HERRERA: I'm going to have to
19 interject here briefly because there are some
20 suggested changes that we're going to ask the
21 Commission to accept that were not included in the
22 Committee notices sent out March 9th.

23 I think it's important that for the
24 record we go through and maybe highlight those
25 suggested changes.

1 ASSOCIATE CHAIRMAN MOORE: Okay, let's
2 do that in the context of the motion, then, that's
3 before us, the changes to the original report, the
4 suggested changes that are coming.

5 MR. HERRERA: That's fine.

6 MS. MERRITT: Okay, the first of these
7 is to essentially drop the provision that was in
8 the proposed guidelines to permit some of this
9 funding to go to photovoltaic systems not eligible
10 under the merging buy-down program. The passage
11 of Assembly Bill 29X pretty much makes this a moot
12 point, which, in fact, legislation has opened that
13 up to all residents in California. So we would
14 delete that from the guidelines.

15 We've had issues regarding certification
16 of eligible solar energy systems by a nationally
17 recognized certification agency, other than this
18 Solar Rating and Certification Corporation, which
19 was -- in the law. This has some ramifications
20 for potential applicants of multiunit systems,
21 which are larger systems serving multiple units.
22 These systems are not currently certified by the
23 SRCC.

24 And we've become aware of a collection
25 of California-based solar energy businesses also

1 not currently certified by SRCC for a variety of
2 reasons. We would like to accommodate as many
3 eligible systems as possible. This may involve an
4 expansion of the definition of nationally
5 recognized certification agency. We're
6 recommending that some clarifying language be
7 added in the appropriate places within each of the
8 guidebooks, and the solicitation document to
9 basically address this. And indicate that we are
10 going to be working with stakeholders on the
11 issue.

12 Some of the other issues that have come
13 up vis-a-vis the public comments that we've
14 received, some clarification on the separate
15 electricity metering requirement for multiunit
16 systems. Again, we would just add clarifying
17 language into the guidelines, as appropriate, but
18 insist that applicants must submit proof of
19 multiple units being served.

20 There was a request by the stakeholder
21 groups to amend the language in the guidelines
22 regarding the solar energy factor values that are
23 used as a criteria for eligibility for solar
24 domestic water heating systems. And we agree that
25 a SEF of 1.4 is appropriate for systems with

1 electricity --

2 COMMISSIONER LAURIE: Mr. Chairman, if I
3 may, and I apologize for interrupting, your
4 proposed changes are in writing in a document, are
5 they not?

6 MS. MERRITT: They are.

7 COMMISSIONER LAURIE: Right, and the
8 Committee has considered those prior to this, and
9 is recommending approval. And so I think what Mr.
10 Herrera is asking us is for us to get this
11 formally into the record.

12 MR. HERRERA: That's correct, and you
13 can do it one of two ways. If it's already
14 created in a document, you could docket that item,
15 for example, or introduce it with the record.

16 COMMISSIONER LAURIE: And that would be
17 my intent. To accept the Committee recommendation
18 as the docketed item.

19 MR. HERRERA: For the benefit of those
20 stakeholders who might be here who have comments
21 on those particular points, is why I was stressing
22 that we deal with it here. But if there are no
23 stakeholders, then perhaps the most expedient way,
24 as Commissioner Laurie --

25 ASSOCIATE CHAIRMAN MOORE: Well, let me

1 just ask, is there anyone here who did want to
2 converse with us on this item, and who has
3 comments that weren't submitted in the docket that
4 was opened?

5 There are none. And I'll accept the --
6 make the motion modifications that suggests that
7 the docketed item be that which we are voting on,
8 along with the Committee-recommended changes.
9 Second, do you concur?

10 COMMISSIONER ROSENFELD: Yes.

11 ASSOCIATE CHAIRMAN MOORE: All those in
12 favor signify by saying aye.

13 (Ayes.)

14 ASSOCIATE CHAIRMAN MOORE: Those
15 opposed? That motion carries. Thank you very
16 much, and this is, as I said, a step forward.

17 COMMISSIONER PERNELL: Great job.

18 ASSOCIATE CHAIRMAN MOORE: Much thanks
19 to Gabe and to Melinda for the work that they've
20 put in to make this happen. Thank you.

21 With that, I'll turn to item 13 and tell
22 you that it's moved to a May 2nd business meeting.

23 Items 14 and 15 are obviously related,
24 and are a dynamic response, if you will, to the
25 need to continue our renewables program and make

1 sure that it stays competitive in the long term.

2 We've looked long and hard at what we
3 can do to contribute to the current energy mix,
4 and have concluded that there are at least one,
5 and perhaps more, auctions in our future to take
6 advantage of our successful use of the money to
7 create new facilities.

8 We have some roll-over funds that are a
9 part of the original SB-90 authorization to spend
10 money on existing resources. And we've tapped
11 those, at least in part, to have one of our
12 previous auctions.

13 And what we're proposing is to get
14 authorization to continue that effort, although
15 there may be other items that we consider,
16 certainly a broader range of opportunities in
17 which to make the renewable money go farther.

18 But let me turn then to the auction,
19 itself, and ask Mr. Tutt, who is here for Marwan
20 Masri, and on behalf of the staff and Mr. Herrera,
21 representing our conscience on the program here,
22 or the reins, as he prefers to see them, or
23 throttle reduction, going too fast too far. For
24 which I'm very grateful.

25 Mr. Tutt.

1 MR. TUTT: Thank you, Chairman Moore.
2 My name is Tim Tutt, I'm the Assistant Manager of
3 the Renewable Energy Program.

4 And we're here today to ask for your
5 approval for some changes in our guidelines to
6 allow us to hold a third auction to provide
7 incentive funds to new renewable energy projects
8 in California.

9 The program was initially set up; we had
10 an auction that allocated 162 million back in
11 1998. That was the total of new funds that we
12 initially allocated for that purpose, for
13 incentivizing new renewable resources in
14 California.

15 Last fall we had a subsequent auction
16 which allocated an additional \$40 million. That
17 money was available because market prices in
18 California were fairly high last year, and
19 consequently a significant amount of the funds
20 that we had expected to be, had reserved it to pay
21 for incentives to existing renewables, were not
22 expected to be used by the end of the program,
23 which is the end of this current year.

24 Since that time, since last fall market
25 prices have remained high. And an additional

1 amount of the funding that was, at one point,
2 established and allocated to the existing program,
3 should clearly be available for funding a new
4 auction and we're expecting, hoping to go out with
5 a notice of an auction by the end of the month,
6 with proposals due by June, in an effort to bring,
7 again, new renewable power plants on line as
8 quickly as possible to help in California's energy
9 crisis.

10 ASSOCIATE CHAIRMAN MOORE: Let me ask
11 Mr. Herrera to just briefly elaborate on the
12 authority that we have under the existing law to
13 even consider this. And to move forward with any
14 sort of broad range of proposals to deal with
15 bringing renewables, continuing to bring
16 renewables into the market.

17 MR. HERRERA: Senate Bill SB-90 was
18 codified in PUC section 383.5 does give the
19 Commission authority to reallocate funds from the
20 various accounts within the renewable resource
21 trust fund.

22 There are four accounts in there and
23 they were each initially allocated funds at the
24 beginning of the program, which was 1998.

25 What section 383.5, and it's actually

1 subdivision (g), says is the Commission may
2 reallocate funds from the different accounts
3 without the need for additional legislative
4 authority, provided it does so in a manner
5 consistent with its policy report, which it
6 submitted to the Legislature in 1997.

7 In that report we say that towards the
8 end of the transition period, which is going to
9 end this year, the Commission will take a look at
10 the account needs and market conditions, and then
11 reallocate funds.

12 And so at this point in time I think
13 staff has concluded there's more than enough funds
14 in the existing account, for example, to
15 reallocate some of the unused funds to the new
16 account to hold a third auction.

17 And that is what's being proposed. I
18 believe the number is up to \$40 million for this
19 third auction.

20 ASSOCIATE CHAIRMAN MOORE: Just for the
21 benefit of my colleagues, and then I'm going to
22 ask for public comments on this, we monitor this
23 fund almost literally daily, between Suzanne and
24 Tony, who was here a little earlier, to look at
25 what's being paid out versus what the current

1 prices are.

2 And we tried to be as prudent as we can,
3 looking forward to say we don't need to keep money
4 in the bank and simply won't be spent; and yet,
5 should prices fall in the market, we have to be
6 ready to go back and meet our commitment to those
7 existing generators.

8 It's a fine line, and we want to be able
9 to try and be as responsive to the market as we
10 possibly can with prudent reserves. Included in
11 that is the response to the newest legislation
12 which requires us to participate, let's say a
13 little more aggressively than we had in the past.
14 Or to attempt to participate more aggressively in
15 the area of emerging products.

16 And so we're trying to make sure that
17 nothing that we recommend ultimately would take us
18 away from that mission, or make that less
19 successful.

20 Second point is that as we look out,
21 we're trying to imagine the world of renewable
22 energy that's going to be supplemented by the 995
23 money that we have coming in, and to make sure
24 that we transition smoothly into that world, as
25 well.

1 As you know, the Electricity Committee
2 has not submitted the investment plan that's
3 required under the law, and we've been holding
4 back waiting to find out what the Legislature
5 would do with some of the renewable related items.
6 And, as yet, we don't have firm resolution on all
7 of that.

8 So, we're mindful of all of those moving
9 targets in trying to offer up a prudent and yet
10 responsible contribution to the next world of
11 energy expansion.

12 So that's how we came to the number that
13 we're suggesting, which is \$40 million. By the
14 way, the authorization and the encumbrance of that
15 money is many months off, as a practical matter.

16 So the authorization to proceed today is
17 really to get us out into the marketplace and see
18 what kind of interest and response there would be.
19 We're not committing \$40 million today to be paid
20 out to bidders or respondents tomorrow.

21 Are there questions of Mr. Tutt or Mr.
22 Herrera before I call for public comment? All
23 right, I know that Mr. Judd's here, and I know Mr.
24 Kelley is here. Both would like to comment. Let
25 me ask them to come forward and offer us their

1 comments.

2 MR. JUDD: If I could I'd like to
3 distribute a couple of sheets briefly.

4 ASSOCIATE CHAIRMAN MOORE: Sure. If you
5 could do that?

6 MR. JUDD: Just to the members just for
7 reference.

8 My name is Bob Judd. I'm Director of
9 the California Biomass Energy Alliance. The
10 owners and operators of the state's existing
11 biomass power facilities, and one of the existing
12 renewable technologies that in our estimation
13 would be negatively impacted by the reallocation
14 of funds under discussion now.

15 I appear before you today to discuss a
16 serious problem caused by this proposal, and to
17 present for your consideration, a counter-proposal
18 that may solve a problem rather than create one.

19 We feel strongly that the proposed
20 action is inappropriate and premature. It is a
21 radical and unwarranted departure from the SB-90
22 allocation plan endorsed by the Legislature and a
23 new variation that we have not seen before on the
24 roll-over of funds proposed in the draft
25 investment plan.

1 We're here today to ask the Commission
2 to suspend further action on a new renewable
3 auction today. More specifically, we are asking
4 you to consider two things today.

5 First, do not reallocate funds from the
6 existing renewables account to the new resources
7 account today. Set the issue aside.

8 Secondly, reschedule this issue for
9 consideration and vote in two weeks, rather than
10 today, to allow research and analysis that is
11 necessary to make a reasonable decision between
12 now and then. We realize there is some time
13 pressure on this, as you will hear in the
14 remainder of my testimony, there are questions
15 that would benefit from answers before you make
16 your decision.

17 As you know, the state is facing an
18 unprecedented electricity supply shortage. In
19 part, this is due to inadequate generation
20 capacity, but it is also due to a liquidity crisis
21 among existing generators.

22 We have, today, a specific and simple
23 counter-proposal, open to question and further
24 discussion, that we ask you to consider. This
25 proposal is consistent with the guidelines that

1 have been in place since the SB-90 program was
2 implemented.

3 As you know, in the sheet that I just
4 passed out to you, the existing renewables are
5 eligible for a payment of up to 1 cent per
6 kilowatt hour when the price they are paid for
7 their electricity falls below a specified target
8 price.

9 You'll see on the third page there that
10 it shows you the tiers, tier 1, tier 2, tier 3.
11 They are all eligible for up to a penny if the
12 price they are paid falls below their respective
13 target prices of 5 cents, 3.5 cents, and 3 cents.

14 These are the rules that were agreed
15 upon by all parties when SB-90 was adopted, and
16 when the plan was put in place by the Commission
17 and endorsed by the Legislature.

18 The reality is that many of the existing
19 renewables had been paid far less than the target
20 price for their electricity in recent months.
21 What we have been paid is, in reality, the market
22 price.

23 Consequently, under existing rules,
24 consistent with the plan in effect now, existing
25 renewables are eligible to submit their generation

1 and payment data to the CEC now. And in the case
2 where the amount they have been paid is less than
3 the target price for their tier, they are eligible
4 for up to 1 cent per kilowatt hour of electricity.

5 For renewables, existing renewables,
6 broadly you'd simply take the total generation
7 during a given time period, let us say the four-
8 month period that has preceded this meeting. You
9 would divide that total generation by the amount
10 that they were paid. If that amount is less than
11 their target price, their eligibility is already
12 established by this.

13 I've given you an example of one
14 existing renewable facility that shows the amount
15 of kilowatt hours that it generated; the amount it
16 was paid during the month of January; and the rate
17 it was actually paid during the month of January,
18 2.5 cents roughly.

19 This would vary facility by facility,
20 but I think it's a fairly typical example.

21 The benefits of responding to this
22 proposal is that it does not require changes in
23 the existing guidelines, simply compliance with
24 the existing guidelines.

25 Our request is justifiable, legitimate

1 and makes immediate use of the dollars available.
2 It supports existing renewables as the guidelines
3 call for in a very difficult time. It avoids
4 negative consequences. It insures available
5 electricity for this summer, rather than
6 undermining that, as many of you know, thousands
7 of megawatts of QFs are offline, mostly gas, some
8 renewables.

9 And we believe that it is an appropriate
10 use of these funds, rather than diminishing the
11 funds that have been made available for existing
12 renewables, further jeopardizing them at a time
13 when they are most needed. This provides some
14 degree of stability to these facilities.

15 To reiterate our request, we ask that
16 you not approve transferral of the money from the
17 existing account to the new account today. And
18 second, that you give us, working with staff, with
19 other existing renewables, the opportunity to
20 develop data to confirm that the allocation of
21 these funds to existing renewables would be a
22 useful exercise.

23 ASSOCIATE CHAIRMAN MOORE: Thank you,
24 Mr. Judd. Let me find out if anyone has any
25 questions.

1 COMMISSIONER BOYD: Mr. Chairman.

2 ASSOCIATE CHAIRMAN MOORE: Commissioner
3 Boyd.

4 COMMISSIONER BOYD: Bob, I'm just trying
5 to -- you're in effect saying don't transfer the
6 money because it may be needed to meet existing,
7 as you define them, existing obligations?

8 MR. JUDD: Yes, sir.

9 COMMISSIONER BOYD: If I hear you right?

10 MR. JUDD: Yes. Not only may be needed,
11 is needed, and is in accordance with the
12 Commission's own guidelines, meant to be paid to
13 the existing renewables, because the amount they
14 have been paid is less than the target price,
15 so --

16 COMMISSIONER BOYD: And that gets to the
17 second half, or a second question, if I may. I
18 was, frankly, a little taken aback by your example
19 of rate actually paid in today's market. That's a
20 little surprising to me, and not a statistic I
21 knew. Is this for a real or hypothetical
22 renewable power facility that is selling in the
23 open market, or is selling to the Department of
24 Water Resources, i.e., it does not have an
25 existing SO4 contract, some residual or something?

1 This is a new --

2 MR. JUDD: It's a typical facility that
3 is selling its electricity output under contract
4 with one of California's investor-owned utilities.

5 COMMISSIONER BOYD: An existing long-
6 term contract?

7 MR. JUDD: Yes.

8 COMMISSIONER BOYD: And is this a
9 partial payment?

10 MR. JUDD: It is a partial payment.

11 COMMISSIONER BOYD: Okay.

12 MR. JUDD: It is an actual payment. I
13 guess one with --

14 ASSOCIATE CHAIRMAN MOORE: Without
15 naming names.

16 COMMISSIONER BOYD: Yeah, right.

17 MR. JUDD: With a little tongue in cheek
18 one could say it is an actual payment, and any
19 other payment at this point is a theoretical
20 payment. We are most hopeful, but we don't want
21 to pollute this environment with --

22 COMMISSIONER BOYD: This is the delta --

23 MR. JUDD: -- legal matters that are
24 being discussed in other --

25 COMMISSIONER BOYD: This is the delta

1 that's lacking under existing contracts based on
2 that other problem we all know about, and you see
3 that that is a potential liability, I guess you
4 say it is a liability of the Energy Commission's
5 program to make up that increment. Interesting
6 argument.

7 MR. JUDD: Well, it's what the rules
8 say. If you're paid less than the target price,
9 the SB-90 funds were there to provide support to
10 maintain viability of this range of renewable
11 facilities.

12 ASSOCIATE CHAIRMAN MOORE: Other
13 questions?

14 MR. HERRERA: I would just like to
15 comment that Mr. Judd's position here, I think the
16 statute does provide for payments, but it's in the
17 context of payments based on SRAC prices.

18 And I guess in the example shown here
19 the amount actually paid does not include what
20 might be characterized as say accounts receivable
21 for some outstanding debts. If you include that
22 amount, whether it's contingent or not, does the
23 actual, you know, the rate actually paid go up
24 such that it's entitled to payment under the
25 program. I would speculate probably not.

1 And then if it was paid, what happens to
2 the money that the generator was paid, which
3 rightly they should not have been paid? Do we set
4 up some sort of repayment plan? Is this a loan,
5 so to speak? Which, I think, is beyond the scope
6 of SB-90.

7 ASSOCIATE CHAIRMAN MOORE: Right. Well,
8 I'm assuming that Mr. Judd is including in his
9 arguments that repayment potential would be part
10 of whatever was worked out.

11 MR. JUDD: We'd like to be able to
12 discuss that with parties in the short term, to
13 articulate some of those responses. We know
14 there's a concern about this perhaps being seen as
15 a loan, and whether that goes beyond the authority
16 of the Commission. Perhaps there are other ways
17 to insure equitable treatment on both sides of
18 this equation.

19 And we'd like to have a brief period of
20 time to work with staff and other renewables to
21 confirm that there is a pathway through this.

22 ASSOCIATE CHAIRMAN MOORE: Thank you,
23 appreciate it. Mr. Kelley, you indicated you
24 wanted to speak?

25 MR. KELLEY: Thank you, Commissioner.

1 Steven Kelley with the Independent Energy
2 Producers. And I'd like to agree with the earlier
3 comments that the purposes of these moneys were
4 to, one, provide some insurance for the existing
5 renewables, and that also not to create a
6 situation where the money was being unused.

7 I have not had time to review Mr. Judd's
8 proposals, so I think it probably would not have
9 any real effect on your auction for new if we took
10 some time to consider it, caucus amongst the
11 renewables, caucus with the staff, talk about the
12 implications of this. And make a determination
13 about the value of this.

14 The reality is that existing generators,
15 renewable generators have not been paid for some
16 time. There was a payment that was made this
17 week, and it's my understanding that that is 100
18 percent of the due amounts for the period for
19 which they were covering, which was for PG&E April
20 8th through the 15th, I think.

21 There's some concern amongst the
22 renewables whether these payments that were made,
23 the most recent payment, will continue.

24 ASSOCIATE CHAIRMAN MOORE: That's
25 interesting. The popular press, as it were, or at

1 least the popular press in the energy world, was
2 reporting a 15 percent payment, I thought.

3 MR. KELLEY: PG&E has historically been
4 making a 15 percent payment. Edison has not been
5 making any payments. As a result of a recent PUC
6 decision there was a determination that they had
7 to pay going forward, deliveries of the QFs. And
8 that was prior to the bankruptcy proceeding being
9 implemented.

10 So, there's a great deal of confusion
11 amongst the renewable community about what you're
12 actually going to get paid.

13 ASSOCIATE CHAIRMAN MOORE: Okay, so to
14 the best of your knowledge, 100 percent payment
15 was received. I mean I talked to --

16 MR. KELLEY: For a short period of time.

17 ASSOCIATE CHAIRMAN MOORE: -- one
18 renewable provider who got a letter saying, and
19 the payment's attached, but there was no
20 attachment to the letter. So, --

21 MR. KELLEY: I haven't heard about that
22 one. I have heard from some people, now that I
23 think about it, I think they were Edison territory
24 contract holders, where they were paid what they
25 believe to be the full amount.

1 ASSOCIATE CHAIRMAN MOORE: For that one
2 period?

3 MR. KELLEY: For that very small period.

4 ASSOCIATE CHAIRMAN MOORE: Okay. Other
5 comments?

6 MR. KELLEY: That'd be it.

7 ASSOCIATE CHAIRMAN MOORE: Okay. Mr.
8 Ponder, I saw you in the back, and Mr. Moe, I'll
9 get to you in a second.

10 MR. PONDER: Steve Ponder with FPL
11 Energy. And we're actually on both sides of this
12 issue, in that we --

13 ASSOCIATE CHAIRMAN MOORE: Uh-oh, --
14 (Laughter.)

15 MR. PONDER: -- in that we've got
16 existing facilities that are joined, you know,
17 from existing accounts, some of the benefits
18 there. And also we bid into the auction and we
19 were a winner in the previous auction on a go-
20 forward basis because we're primarily a developer
21 of wind.

22 And we certainly are interested, if it
23 goes forward. I, too, have not seen Mr. Judd's
24 proposal, but I don't think I would agree with
25 Bob's characterization that it's clear at this

1 point. I would sort of side with what Mr. Boyd
2 was saying earlier, that I think we're in
3 unchartered territory here with the, you know,
4 major utility in bankruptcy and the other one
5 teetering.

6 When these programs were established the
7 language clearly didn't comprehend the situation
8 that we're in now, that we'd be looking for some
9 type of a makeup from the existing account from a
10 situation from an unsecured, or an uncreditworthy
11 entity, one of the major utilities. That was just
12 something beyond comprehension.

13 So, I'm not sure how we work through
14 this, but you know, I definitely support the idea
15 of having another auction soon. Because I think
16 the key to going forward is keeping the lights on
17 and having more power on line. And if this
18 auction's going to help that, then I think it's
19 certainly something that we should support.

20 I'm sympathetic with the points that Bob
21 has raised, but, like I said, I haven't even seen
22 what he's passed out here, and would need some
23 time to look at it.

24 ASSOCIATE CHAIRMAN MOORE: Thanks,
25 Steve. Mr. Moe.

1 MR. MOE: I am Orville Moe with Onsite
2 Power Systems. And we're in the process of
3 developing and installing a number of new systems
4 that have been underway, using anaerobic digester
5 gas. We have one successful program, as you're
6 aware, Commissioner Moore.

7 The last time I was here, and I believe
8 that we should go ahead with the proposal as it
9 is, because the bailout issue, I think, is a
10 separate issue. And certainly people have been
11 hurt by the actions of the big three, or big two
12 that have created problems with it, but I don't
13 believe that's the purview of this situation here
14 to resolve.

15 It would be my opinion that we could
16 better apply those funds to bringing new programs
17 on line, and getting a number of new programs
18 going with the help of these funds, which I think
19 are clearly needed.

20 Last time I was here I was asked for
21 some information on how much we potentially could
22 do in the state with the waste recovery. I have
23 some papers here for that. I won't go into that,
24 to save time, but I would like to pass them out to
25 the members.

1 ASSOCIATE CHAIRMAN MOORE: If you'd give
2 those to Tim he'll make sure that we get them.
3 Thanks, Orville.

4 Anyone else who'd like to address us on
5 this item? All right, with the indulgence of the
6 Commission, what I'd like to suggest is that we
7 remand this back to the Electricity Committee for
8 two weeks. Get it back on the agenda. At that
9 time we'll have a chance to consider some of the
10 comments that have been made, and respond.

11 I'll tell you, the magnitude is unlikely
12 to change. It will probably still be our intent
13 to use what's available, which amounts to about
14 \$40 million, that we can put in play here, because
15 of the other constraints that I've outlined.

16 So, with your concurrence, I'll take
17 this off.

18 COMMISSIONER LAURIE: Did you want to
19 reschedule it?

20 ASSOCIATE CHAIRMAN MOORE: I'd like to
21 reschedule for two weeks. We'll put it back on
22 the agenda May 2nd.

23 MR. TUTT: Commissioner Laurie, is there
24 a business meeting prior to that that we could
25 take advantage of, given that we'd like to roll

1 out the notice of auction by the end of the month
2 if we could?

3 ASSOCIATE CHAIRMAN MOORE: Well, we
4 can -- I'll back down and we've got one other
5 special meeting that's coming up in a week, so we
6 can -- let me see if I can -- I'll tell you what,
7 schedule it for a week, and if we can do it, we
8 can get it back together, we'll put it on in a
9 week. And if not, then we'll push it out to the
10 second week. So that way we've got all the
11 options available to us. We may be back for the
12 2nd, which will put us into the following month
13 for an auction.

14 COMMISSIONER PERNELL: I would agree
15 with that, Mr. Chairman, and just comment that the
16 various stakeholders, we are, at least in my mind,
17 this is time sensitive, so I would encourage
18 everybody to work to have it resolved within a
19 week.

20 ASSOCIATE CHAIRMAN MOORE: Well, I
21 understand that. I just say in my own -- sorry?

22 SPEAKER: We won't be able to do it for
23 the 25th, because that agenda has already gone
24 out.

25 ASSOCIATE CHAIRMAN MOORE: All right,

1 well, you can add -- well, actually we can add on,
2 because --

3 COMMISSIONER PERNELL: Yeah, --

4 ASSOCIATE CHAIRMAN MOORE: -- we're
5 adding on item 23 here today, so it will -- we'll
6 continue the item to the next agenda. And I'll
7 just say that from my own standpoint I've got a
8 little bit of a constraint because I'm on a total
9 of three cases, I think, between now and then. So
10 I've got some hearings that require me to be out
11 of town literally until that morning.

12 So, we'll do our best.

13 All right, let's take up added item 23.
14 Thank you, Mr. Tutt, Mr. Herrera and everyone who
15 testified, and Suzanne and Jim, for all the work
16 that you did on it.

17 Item 23. This was out on April 6th, the
18 Department of Water Resources. Possible approval
19 of contract 150-00-003 for \$20 million,
20 effectively a pass-through, I might add, to
21 provide performance incentives to owners of power
22 plants to accelerate the construction of power
23 plants for new sources of electricity generation
24 brought on line prior to July 1, 2001.

25 And before I turn to the Administrative

1 Officer for some help on this, let me just ask
2 Commissioner Laurie, it seems to me this item
3 would normally, or an item like this would
4 normally pass through your Committee for review.

5 Did you take this matter up?

6 COMMISSIONER LAURIE: No, sir.

7 ASSOCIATE CHAIRMAN MOORE: Did any of
8 the Committees take this matter up? Because I
9 didn't see any Committee reports on this at all.

10 COMMISSIONER LAURIE: Let me indicate, I
11 have no recollection of it. I don't know when it
12 would have been. I've discussed the issue
13 philosophically with some folks for some time,
14 frankly indicating my opposition to the concept.

15 But I have to admit that I don't know
16 what this item is.

17 ASSOCIATE CHAIRMAN MOORE: Well, we
18 have --

19 COMMISSIONER LAURIE: Ms. Shapiro did
20 have a discussion with Mr. Therkelsen. I'm
21 wondering if she can help us out with this?

22 ASSOCIATE CHAIRMAN MOORE: Okay, the
23 only thing I have, just to put everyone on the
24 same plane on this, is that I have a work
25 statement for construction incentives pursuant to

1 Executive Order D-2701. And it identifies that
2 the \$20 million, as a maximum, could be awarded.
3 And that the incentive would be available to
4 project developers that demonstrate they've
5 accelerated their construction to come on line.

6 It has to be new sources of generation.
7 The acceleration of online dates has to be
8 demonstrated through permits rather than
9 documents. That it identify the planned online
10 dates. They have to sign a power sales contract
11 with DWR or the Independent Systems Operator.

12 And, Mr. Blees, I infer that that line
13 in the work statement is not in conflict with any
14 kind of constitutional issues because it's a -- it
15 involves a performance incentive, something that's
16 voluntary on our part, something that would be
17 voluntarily entered into by someone else.

18 So it's outside the realm of an approval
19 that would be contingent on something like this,
20 am I correct?

21 MR. BLEES: Probably, but I have not
22 seen this before. And I don't know if anybody in
23 our office has reviewed it from that point of
24 view.

25 ASSOCIATE CHAIRMAN MOORE: So you

1 haven't seen this, either?

2 MR. BLEES: No, sir, I personally would
3 not ordinarily see this. It would be handled by
4 one of our contractor --

5 COMMISSIONER LAURIE: Mr. Chairman, --
6 handing out the executive order -- I guess my view
7 is if the Governor tells us to do this program and
8 money is provided for the program, then we should
9 do the program.

10 So, I'm just looking at this executive
11 order, and attempting to determine what's
12 discretionary and what is not.

13 ASSOCIATE CHAIRMAN MOORE: Well, I would
14 be the last one to disagree with you that when the
15 executive order comes out we need to comply, make
16 sure that it happens.

17 But it seems to me we have to be
18 absolutely careful that we do it in a way that's
19 defensible so that a) we don't lose time, and b)
20 we don't have whatever incentives that we provide
21 reversed on us somehow.

22 Would it be appropriate then -- and I'm
23 looking at item A, as an example, 3A in the work
24 order, or work statement, excuse me. And I'm
25 trying to imagine that some of the definition of

1 what qualifies and what doesn't qualify really out
2 to be explicitly laid out in some framework that
3 has at least topically come through our legal
4 office. So that we have something other than an
5 intent to vote on.

6 And, Mr. Blees, I'm sorry to be
7 springing this on you, but I literally got a copy
8 of this work statement just before the meeting,
9 thanks to staff. Or I wouldn't even have that to
10 say.

11 So, would it be possible for your office
12 to look at this and come up with at least some
13 parametrics that would allow us to view any
14 incentive payment that was made in this pass-
15 through responsibly formally, as it were? In
16 other words, we've got a formal document to use as
17 a touchstone?

18 MR. BLEES: Certainly, yes. The first
19 thing I'll do when I leave the room is find out if
20 anybody in the office has --

21 ASSOCIATE CHAIRMAN MOORE: I'm a little
22 chagrined to be asking you this in the meeting,
23 asking you to respond to it in a broken field
24 sense. But I don't know that I have any other
25 choice under these circumstances.

1 COMMISSIONER BOYD: Mr. Chairman, could
2 I ask a question of --

3 ASSOCIATE CHAIRMAN MOORE: Commissioner
4 Boyd, absolutely.

5 COMMISSIONER BOYD: -- clarification,
6 but I don't know who to ask it of.

7 ASSOCIATE CHAIRMAN MOORE: Well, ask me
8 and I'll direct it where I can.

9 COMMISSIONER BOYD: The Executive
10 Director's chair is empty at the moment. In any
11 event, I was just wondering what is this
12 Commission being asked to do today, to do nothing
13 more than approve the transfer of \$20 million from
14 its jurisdiction to the jurisdiction of the
15 Department of Water Resources? Or is the --

16 ASSOCIATE CHAIRMAN MOORE: Well,
17 actually I think it's the other way around.

18 COMMISSIONER BOYD: Or is the Commission
19 being asked to approve this executive, you know,
20 the procedures outlined in the executive order?
21 My recollection is that the Governor, in the first
22 instance, moved the money to this agency. And
23 upon subsequent discussions of the process that
24 should take place, a lot of people felt that,
25 oops, --

1 ASSOCIATE CHAIRMAN MOORE: It should
2 have gone to DWR instead?

3 COMMISSIONER BOYD: -- it should have
4 gone to DWR.

5 ASSOCIATE CHAIRMAN MOORE: Well, then I
6 misread what we're doing.

7 COMMISSIONER BOYD: And perhaps this is
8 nothing more than approving a transfer of that
9 money over to DWR so they can execute the
10 executive order when it's executed.

11 ASSOCIATE CHAIRMAN MOORE: Okay, then
12 let me turn, Mr. Larson, is that the case? Did I
13 misread this?

14 MR. LARSON: Well, I really do
15 appreciate all the help here in trying to sort
16 this out. Talking with Bob Therkelsen, he would
17 suggest that we pull this --

18 (Laughter.)

19 MR. LARSON: -- at this point. Yes. Or
20 maybe carry it over till next week, if you're not
21 comfortable with pulling it. But, whatever, so it
22 would be --

23 ASSOCIATE CHAIRMAN MOORE: Well,
24 actually I think they amount to the same thing.
25 But, can we at least get an answer to the core

1 question of which direction is the money flowing
2 at this point? Is it flowing into the CEC or is
3 it, in theory, flowing --

4 MR. LARSON: It's supposed to flow
5 somewhere else. It's supposed to be somewhere
6 else.

7 ASSOCIATE CHAIRMAN MOORE: I see.

8 COMMISSIONER ROSENFELD: From us to
9 somewhere else.

10 ASSOCIATE CHAIRMAN MOORE: So, the
11 Brinks truck backdoor opened, we were in the
12 right -- picked up that bag of money, and we now
13 have the responsibility of acting like good
14 citizens and --

15 MR. LARSON: It seemed like a good idea
16 when they did it, you know, and now it doesn't.
17 So.

18 ASSOCIATE CHAIRMAN MOORE: Let's take
19 this item and have the -- Commissioner Pernell.

20 COMMISSIONER PERNELL: Mr. Chairman,
21 I've got a comment on this. First of all, the
22 concept I would agree with. I think it's a good
23 one.

24 What I remember this concept, it was
25 looking at ways in order to bring generation on

1 line as soon as possible.

2 But, the procedural matter of how we got
3 this is in question. So I'm not opposed to item
4 23. I think we need to do what we can to try and
5 bring generation up to meet the challenge. But
6 how the Commissioners got it, and the fact that no
7 one knows the details of it, is a little bit
8 troublesome to me.

9 MR. LARSON: Well, I can add a little
10 there. In that when the executive order -- much
11 has happened since the executive order that sent
12 this to the Energy Commission was executed.

13 And the dynamics have changed some. And
14 the program has gone through, this was originally
15 the Governor's idea, and it's gone through
16 mutations.

17 And for one period of time it was
18 thought this really ought to be done through
19 legislation. Then at another point in time it was
20 thought it should be shifted as different
21 institutional apparatus were built, it was decided
22 that this was not the appropriate place for this
23 to reside, and so it was then decided, it was
24 hoped that we could shift it somewhere else.

25 And this is sort of caught in the --

1 this piece of paper is sort of caught in the
2 debris of the time. And it should be withdrawn.

3 I think this will be dealt with
4 elsewhere effectively and quickly.

5 ASSOCIATE CHAIRMAN MOORE: Well, let's -
6 - with the concurrence of the Commissioners, then
7 I'm going to just, in order to keep the matter
8 before us potentially for some resolution, I'm
9 going --

10 MR. LARSON: You never know.

11 ASSOCIATE CHAIRMAN MOORE: One never
12 knows. I'm going to continue the item until the
13 May 2nd business meeting, at which point we'll
14 look for resolution.

15 I'll just say it seems to me that as an
16 item, as a topical item, I would sure feel a lot
17 better, and I bet DWR would, too, ultimately, if
18 they get this money, having someone like the
19 Siting Committee having opined on it. But I don't
20 know whether that will happen or not.

21 But apparently the matter is not before
22 us, and so with that, I'm just going to very
23 gently move it sideways out to the May 2nd
24 meeting, and I bet it doesn't even come back.

25 By the way, where did the money come

1 from? Where is the \$20 million coming from?

2 MR. LARSON: That's a better question to
3 ask of Mr. Boyd, but actually it was from the
4 Parks Department originally.

5 COMMISSIONER PERNELL: And it was 30, so
6 there --

7 ASSOCIATE CHAIRMAN MOORE: And it was
8 30, originally?

9 MR. LARSON: In the original transfer,
10 which, of course, I'm sure he approved of, but --

11 COMMISSIONER BOYD: In the original
12 executive order the Governor swept \$30 million
13 from the Parks Department for this program, and
14 transferred -- directed the money would be
15 transferred here, as the money has subsequently
16 been replaced, as I understand it, by an action
17 that 5X, 29X, I don't know which one carried the
18 money, but Parks gets their money back.

19 But in any event, the process, and
20 that's why, Steve, as you were coming through the
21 door you may have missed part of my earlier
22 question, but I would presume that the only action
23 that this Commission would have to take is to just
24 take the bag of money as was earlier referenced,
25 and officially hand it off to DWR, and nothing

1 more.

2 But, we --

3 ASSOCIATE CHAIRMAN MOORE: Well, maybe,
4 but --

5 COMMISSIONER BOYD: -- can let that sit
6 a week --

7 ASSOCIATE CHAIRMAN MOORE: -- I'd much
8 rather have my legal counsel look at that and say.

9 All right, with that I'm going to --

10 COMMISSIONER PERNELL: I had one other
11 final question, --

12 ASSOCIATE CHAIRMAN MOORE: Commissioner
13 Pernell.

14 COMMISSIONER PERNELL: -- Mr. Chairman,
15 to Mr. Boyd. Is this time sensitive, in your
16 opinion, or to the Executive Director? Because we
17 don't have a lot of facts on it, if it's time
18 sensitive perhaps we can do it faster. If not,
19 May 2nd is fine with me. I mean, it's --

20 MR. LARSON: I don't think it's time
21 sensitive.

22 COMMISSIONER PERNELL: Okay.

23 MR. LARSON: In this forum.

24 ASSOCIATE CHAIRMAN MOORE: All right,
25 thank you.

1 All right, here we go. And sorry, Mr.
2 Judd, that you had to wait through that to have no
3 comment on an item that doesn't seem to be before
4 us. And on which we may not have any influence.
5 I apologize.

6 All right, with that, let me ask the
7 Executive Director, you have a report, Mr. --
8 well, I'll come right back to Tim. I know he's
9 been in and out of the hearing.

10 MR. LARSON: No. I'd like to sort of
11 note that next week at the next hearing, maybe
12 afterwards we could have sort of a sidebar where
13 we can update you on generally, you know, on what
14 we know by then in terms of generation and
15 conservation, where we are in implementation and
16 so forth.

17 ASSOCIATE CHAIRMAN MOORE: Always
18 timely. Mr. Blees.

19 MR. BLEES: Nothing to report, sir.

20 ASSOCIATE CHAIRMAN MOORE: Public
21 Adviser.

22 MS. KRAPCEVICH: Just want to note that
23 when the Public Adviser's Office learned yesterday
24 that the Huntington Beach PMPD and the amended
25 PMPD would be heard and would be moved to the 4/25

1 meeting, that we did contact all the intervenors
2 and the interested public to let them know. And
3 obviously there was protest from that end of it.
4 But just to note that, for the record.

5 ASSOCIATE CHAIRMAN MOORE: Okay, you're
6 registering those protests formally with us. So
7 noted. Thank you.

8 Any public members who would like to
9 comment on items not on the agenda? All right.

10 Tim, --

11 COMMISSIONER LAURIE: Mr. Chairman, let
12 me attempt to discern what the Commissioners would
13 like to do at this point.

14 My interest is the Power Authority in my
15 view is a real big deal that it substantially
16 modifies the market for competitive generation, or
17 at least has the potential for doing so. And I
18 just don't understand the ramifications of it. I
19 don't understand the details of the legislation,
20 itself.

21 It's 1:00; Mr. Schmelzer has been in and
22 out all morning. Let me ask my fellow
23 Commissioners what your interest is. Would you
24 like to have a brief discussion this morning?
25 Would you like to set some time at a future date

1 to have a general discussion about what
2 ramifications are, or do you choose not to discuss
3 it at all?

4 ASSOCIATE CHAIRMAN MOORE: Well, let me
5 ask just a procedural question. Tim, how fast is
6 5X moving this Leviathan bill that's out there,
7 and is it -- is it 6? 6X, excuse me. And is this
8 something that we would be, let's say, poised to
9 do better when we have all five members here at
10 the meeting that Mr. Larson's talking about next
11 week?

12 I mean if it's on a roll, then that
13 question is moot.

14 MR. SCHMELZER: It's on a roll. It
15 could potentially be --

16 ASSOCIATE CHAIRMAN MOORE: Could be done
17 by --

18 MR. SCHMELZER: -- law by the end of the
19 week. It passed through the second appropriations
20 committee this morning.

21 ASSOCIATE CHAIRMAN MOORE: Let's talk.

22 COMMISSIONER PERNELL: Yeah, let's take
23 a minute to get informed.

24 MR. SCHMELZER: So I guess let's have a
25 discussion.

1 ASSOCIATE CHAIRMAN MOORE: You've got
2 the floor.

3 MR. SCHMELZER: Okay. Tim Schmelzer
4 from Office of Governmental Affairs, and good
5 afternoon, Commissioners.

6 I'll describe briefly, and I guess we'll
7 go into detail, as you have questions and I'll do
8 my best to answer those questions.

9 SB-6X is legislation, as sponsored by
10 Senator Burton and Senator Bowen, would create
11 what's been called in the papers a Public Power
12 Authority; in the bill it's called the California
13 Consumer Power and Conservation Financing
14 Authority.

15 The structure of the Authority would be
16 that it would have five members on a board that
17 would give direction to a chief executive officer,
18 who would be charged with carrying out that
19 board's direction.

20 The board would consist of four
21 Governor-appointees that would sit for four-year
22 staggered terms without compensation, and the
23 State Treasurer would be the fifth member of that
24 board.

25 The powers of the authority relate to

1 generation, conservation and natural gas
2 facilities.

3 With regard to generation, its powers
4 are most broad. This entity would have the
5 authority to acquire, operate and finance
6 generation facilities in this state. The bill is
7 very specific that it's to supplement existing and
8 currently under construction private development.

9 And the bill also provides that the
10 Authority may provide financial assistance for the
11 development of renewable and conservation
12 projects, as well as natural gas transportation
13 and storage infrastructure.

14 In making its decisions on financing,
15 the Authority would be specifically required to
16 consult with the Energy Commission and with regard
17 to generation, also with the Independent System
18 Operator, with regard to conservation and natural
19 gas, the Public Utilities Commission. And
20 municipal utilities would also have a role in
21 advising the Authority.

22 COMMISSIONER LAURIE: And the advice is
23 as to need, is that correct? And that word is
24 specifically referenced in the legislation?

25 MR. SCHMELZER: Yeah, I'll read that for

1 you, if you like.

2 COMMISSIONER LAURIE: Not necessary.

3 COMMISSIONER PERNELL: What page is it
4 on?

5 MR. SCHMELZER: Page 16. Under article
6 5 of the bill, the bill says that in evaluating
7 eligibility for financing of additional generation
8 facilities, the Authority shall use the Energy
9 Commission's and ISO's, or their successor,
10 information relating to the need for additional
11 generation facility and their forecasts of supply
12 and demand for the state.

13 So, that would be the basis of a
14 decision on whether to finance a new generation
15 project under this bill.

16 ASSOCIATE CHAIRMAN MOORE: Are they
17 going to be staff, Tim? I mean does this imply
18 having a staff, a bureaucracy, as it were, to
19 support them?

20 MR. SCHMELZER: Yes, it does. It gives
21 pretty broad authority for them to engage services
22 as necessary to carry out provisions of this new
23 Act, as well as to engage consultants and other
24 professional expertise.

25 ASSOCIATE CHAIRMAN MOORE: And the

1 source of ongoing funding is the general fund?

2 MR. SCHMELZER: It's actually a revenue
3 bonded Authority. It would be given authority to
4 issue \$5 million revenue bonds. It is anticipated
5 that there would be a general fund appropriation,
6 probably through the Budget Act that would be
7 necessary to support the staff and startup costs
8 of the Authority.

9 ASSOCIATE CHAIRMAN MOORE: So a revenue
10 bond would be paid off, I mean this agency would
11 then be encouraged to create capital facilities
12 that created a revenue stream --

13 MR. SCHMELZER: That's correct.

14 ASSOCIATE CHAIRMAN MOORE: -- in order
15 to pay off such a bond? So they literally were
16 looking at some sort of competitive entity here?

17 MR. SCHMELZER: Yeah, I believe so.

18 ASSOCIATE CHAIRMAN MOORE: And how soon
19 would it come on stream?

20 MR. SCHMELZER: If the bill passed, you
21 know, this week or next week, presumably it would
22 pass by a majority vote. It's not an urgency
23 statute. When it became operative would depend
24 upon when the emergency energy session comes to a
25 close.

1 If the Legislature made the decision to
2 adjourn that session upon passage of this, which
3 the speculation it's probably pretty likely, then
4 this Act would become operative on the 91st day
5 after that action.

6 ASSOCIATE CHAIRMAN MOORE: Well, Tim, at
7 the risk of sounding tremendously obtuse, what's
8 the need for this? What need is this filling? I
9 don't get it? Am I missing something really
10 obvious, other than, you know, I'd love to have a
11 new car and love to have somebody supply it for
12 me. What is going on here? What does this bill
13 do that we don't do today? Help me.

14 MR. SCHMELZER: Well, I believe --
15 Commissioner Pernell, you looked like you wanted
16 to try to answer that, and I'd certainly let you.

17 (Laughter.)

18 COMMISSIONER PERNELL: Well, actually I
19 had another question. But, I would, and this is
20 purely speculation on my part, but I would think
21 that part of the bond measure would go to the
22 purchases of the transmission facilities and --
23 no?

24 MR. SCHMELZER: Actually, I don't
25 believe that this is a --

1 COMMISSIONER PERNELL: Okay.

2 ASSOCIATE CHAIRMAN MOORE: I thought the
3 transmission facilities were --

4 COMMISSIONER PERNELL: So much for
5 speculations.

6 ASSOCIATE CHAIRMAN MOORE: -- being paid
7 for by some other source. Well, let's go back to
8 my --

9 MR. SCHMELZER: Yeah, I'll tell you
10 just --

11 ASSOCIATE CHAIRMAN MOORE: I mean you've
12 heard the arguments that were advanced by the Pro
13 Tem and supporters, so --

14 COMMISSIONER LAURIE: And what are those
15 arguments?

16 ASSOCIATE CHAIRMAN MOORE: I don't know,
17 I'm asking Tim to recount it, because I wasn't
18 there.

19 MR. LARSON: I might be able to help
20 some here, too, in that I think the objective is
21 creating a tool that would permit the state to
22 buy, build and operate power plants.

23 MR. SCHMELZER: At a cost of service
24 basis. I think the main driver on this is a -- I
25 think that the State Legislature feels that

1 there's not much they can do to keep the prices
2 for generation down, other than to, themselves,
3 authorize the state to go into the generation
4 business, or at least have the ability to go into
5 the generation business.

6 I think that's largely what's driving
7 this legislation.

8 ASSOCIATE CHAIRMAN MOORE: Does this
9 Authority have the ability to use eminent domain?

10 MR. SCHMELZER: Yes, it does.

11 ASSOCIATE CHAIRMAN MOORE: And was that
12 eminent domain restricted to power plant sites, or
13 ancillary sites, transmission lines? Is there any
14 restriction on the use of that eminent domain?

15 MR. SCHMELZER: It's relatively broad
16 authority except to say that it is intended to --
17 I should refer specifically to the words -- there
18 was an amendment taken just today in the Assembly
19 Appropriations Committee that made specific a
20 limitation on that eminent domain authority.

21 And I think this was probably necessary
22 to calm some of the development community who was
23 probably concerned that they would get a power
24 plant and then --

25 ASSOCIATE CHAIRMAN MOORE: Having public

1 competition.

2 MR. SCHMELZER: -- have the state come
3 in and take it over.

4 The bill specifically says, as amended
5 today in the Assembly Appropriations Committee,
6 that that eminent domain authority is limited to
7 projects that would supplement the private sector
8 power in operation or under development as the
9 effective date of this section.

10 In other words, it's, I think, geared
11 towards new projects, not things that are on the
12 ground now.

13 ASSOCIATE CHAIRMAN MOORE: It doesn't
14 prohibit that? So, let's say Tim Schmelzer
15 Company gets an operating certificate to put
16 something on the ground in the state. But for
17 reasons of economic reasons, the economy's turned
18 sour, investors don't really want to do it, you
19 hold that operating certificate, you've got the
20 land secured under a lease, but you're not moving
21 on it.

22 And some or one -- one or more members
23 of this so-called Power Authority get inspired and
24 want to see that plant actually go moving forward.
25 So, since you're not moving on it, they come in

1 and condemn the site. What's to keep them from
2 doing that?

3 MR. SCHMELZER: That's a legal question
4 and outside my realm of expertise. I'm sorry.

5 ASSOCIATE CHAIRMAN MOORE: Well, I --

6 MR. SCHMELZER: I can -- the fact that
7 the words of the bill are that it's intended to
8 supplement, not subsume, private sector power in
9 operation or under development at the time this
10 bill becomes law.

11 ASSOCIATE CHAIRMAN MOORE: Is there any
12 indication that use of eminent domain or use of
13 future revenue bonds, or future investment streams
14 has to be done in the context of some overall
15 plan?

16 MR. SCHMELZER: Yes, actually amendments
17 that were made relatively recently to the bill,
18 and I'll direct you if you have a copy of the
19 bill, to page 19, where it requires that the
20 Authority develop an investment plan, so that it
21 has an overall strategy.

22 And it also requires that it do so in
23 consultation with the Energy Commission and the
24 Independent System Operator.

25 ASSOCIATE CHAIRMAN MOORE: Is there

1 anyone out there opposing the bill? Or anyone who
2 isn't afraid of retribution later on, if they dare
3 to oppose something like this?

4 MR. SCHMELZER: I can tell you that it
5 has, by and large, been moving forward on a
6 partisan basis, with the Democrats supporting it,
7 and the Republicans opposing it.

8 However, in committees where the bill
9 has come up, there's been little to no opposition,
10 and lots of support.

11 ASSOCIATE CHAIRMAN MOORE: Have we taken
12 a position internally in this Commission on this
13 bill?

14 MR. SCHMELZER: No.

15 ASSOCIATE CHAIRMAN MOORE: No.

16 COMMISSIONER PERNELL: Has it moved out
17 of appropriations?

18 MR. SCHMELZER: As of this morning.

19 COMMISSIONER BOYD: Out of Assembly
20 Appropriations.

21 MR. SCHMELZER: Yeah, it's on the verge
22 of passage.

23 COMMISSIONER BOYD: The Assembly Floor
24 is next?

25 MR. SCHMELZER: Yes. And then it would

1 have to go to the Senate for concurrence. And
2 it's a majority vote bill, so it's --

3 MR. LARSON: One thing that's
4 interesting, if I might, Mr. Chairman, one thing
5 that's interesting to me about it is that the
6 membership on the committee is unpaid membership.
7 And that -- how's the chairman determined?

8 MR. SCHMELZER: You know, actually I
9 believe the bill is silent on that.

10 ASSOCIATE CHAIRMAN MOORE: It doesn't
11 say.

12 MR. LARSON: So that's an odd structure
13 for --

14 ASSOCIATE CHAIRMAN MOORE: It's also
15 unclear whether the staff are state employees or
16 it's something different. Do you know?

17 MR. SCHMELZER: You know, I don't know.

18 ASSOCIATE CHAIRMAN MOORE: I get the
19 impression that it's an independent kind of deal;
20 that the folks are not going to be civil service
21 employees.

22 MR. LARSON: You mean more like the ISO
23 than like the EOB, for example.

24 ASSOCIATE CHAIRMAN MOORE: Yeah.

25 COMMISSIONER PERNELL: Tim, did this

1 start out as a \$10 billion bond? Is this the --

2 MR. SCHMELZER: I don't recall that the
3 amount has changed, though it might have. What
4 you may be confusing it with is the revenue bond
5 for power purchasing that the Department of Water
6 Resources is engaged in, which is again, a
7 separate monster from this.

8 COMMISSIONER PERNELL: All right. And
9 then my other question deals with the \$1 billion
10 for the renewable energy and conservation. Is
11 that, will that be a generating type of -- since
12 it's revenue bonds, I mean are we --

13 MR. SCHMELZER: It would be for loans is
14 how that would get paid back.

15 COMMISSIONER PERNELL: So it would be
16 for low interest loans and --

17 MR. SCHMELZER: Correct.

18 COMMISSIONER PERNELL: -- that way it
19 would get paid back.

20 MR. LARSON: So this would be just a new
21 conservation program, unexplained, undesigned, out
22 there?

23 MR. SCHMELZER: Yeah, other --

24 MR. LARSON: Billion dollars for another
25 conservation --

1 MR. SCHMELZER: Other than it does
2 require that the projects are those that are
3 recommended by either the Energy Commission, the
4 PUC, or the municipal utilities. So the Energy
5 Commission clearly has a very prominent role in
6 providing advice to how the Power Authority
7 decides to spend its --

8 MR. LARSON: And the power plants sited
9 or built, not sited, the power plants built by
10 this Authority would come through the Energy
11 Commission for approval in the normal way.

12 MR. SCHMELZER: Yeah, there's no
13 exemption from the normal siting process or
14 anything like that.

15 ASSOCIATE CHAIRMAN MOORE: Other
16 questions?

17 COMMISSIONER LAURIE: Mr. Chairman,
18 obviously this bill will become law and will
19 become really the replacement of 1890 in
20 philosophy. I guess my concern is that there's
21 going to be a recognition that we're still tied to
22 a competitive market. And we're reliant upon
23 private generators to build those plants that we
24 need to have built over the next few years and
25 through the next decade.

1 One cannot require those merchant plants
2 to build in California. There's 49 other states,
3 and a whole bunch of -- it's a pretty big planet
4 where private companies can invest their dollars.

5 When private companies look at their
6 investment options, at the top of the list is the
7 stability of the potential investment. Clearly
8 the creation of a publicly owned sector that will
9 be competitive with the privately owned generation
10 systems will impact those decisions. And I just
11 don't know how all that's going to come out.

12 Which leads me to the conclusion that
13 what this law will be doing is taking us well
14 along the path of a publicly owned electricity
15 system, which is 180 degrees contrary to where we
16 were, you know, yesterday.

17 And we just haven't talked about it very
18 much, and it's going to be law, and I just don't
19 know where it's going to take us. So I will
20 simply be watching with interest.

21 ASSOCIATE CHAIRMAN MOORE: Well, you may
22 take -- I understand they're getting a new
23 executive director, or at least rumor is, so maybe
24 you can take it up with him.

25 MR. SCHMELZER: Yeah, one thing I wanted

1 to know, it was actually curious to me, because I
2 had similar questions that Commissioner Laurie is
3 speaking about, and Independent Energy Producers,
4 I believe, are supportive of this legislation.

5 COMMISSIONER LAURIE: They are
6 supportive?

7 MR. SCHMELZER: Yes, I've heard them
8 testify --

9 COMMISSIONER LAURIE: Okay, well, I
10 guess I'd better go back and take Econ-1A over
11 again because I'm way missing it.

12 MR. LARSON: I would add one note. In a
13 meeting I was at last night, one of the Governor's
14 chief spokesmen was talking about turning over to
15 the utilities by January 1, 2003. I mean it would
16 all be back in the hands of -- the operations of
17 the system would all be back in the hands of the
18 utilities was the goal.

19 COMMISSIONER LAURIE: So the state's
20 going to own the system, made contracts with
21 utilities to run it, and -- you know, -- never
22 mind.

23 COMMISSIONER PERNELL: Tim, could you --

24 COMMISSIONER LAURIE: Because I think
25 you're right.

1 COMMISSIONER PERNELL: -- this
2 particular measure is pretty fluent and it might
3 get other amendments, but if the bill, in fact, is
4 signed within the week, can you get the Committee
5 a thorough analysis of exactly what the bill
6 entails?

7 MR. SCHMELZER: Yes, absolutely.

8 COMMISSIONER ROSENFELD: I guess --

9 ASSOCIATE CHAIRMAN MOORE: Commissioner
10 Rosenfeld.

11 COMMISSIONER ROSENFELD: -- I do have
12 one question, either for Steve Larson or Tim. I'm
13 not quite as surprised at all this as Commissioner
14 Laurie. But I am surprised that the Independent
15 Power folks, the merchant power plants haven't
16 lined up against it. What's going on here? I
17 mean did I also flunk Econ-101?

18 MR. LARSON: Tim, what were their
19 arguments? What did they say when they testified
20 that they were in favor --

21 MR. SCHMELZER: Not a lot, just that
22 they were --

23 MR. LARSON: Were in favor?

24 MR. SCHMELZER: -- in favor of it. Yes.
25 You know the rule, you say as little as possible.

1 COMMISSIONER PERNELL: Some committee
2 chairmen only want you to say as little as
3 possible.

4 ASSOCIATE CHAIRMAN MOORE: Thank you,
5 all. This meeting is adjourned.

6 COMMISSIONER PERNELL: Mr. Chairman, I
7 have one thing just as a matter of --

8 ASSOCIATE CHAIRMAN MOORE: Uh-oh, all
9 right.

10 COMMISSIONER PERNELL: -- information.
11 This will be very brief. But the Efficiency
12 Committee wants to have hearings with the
13 Municipal Utility Districts in relation to their
14 programs for energy efficiency and conservation.
15 And we'll set that up; we'll do it with CMUA and
16 get some information back to the Commission on
17 what the Municipal Utilities are doing.

18 ASSOCIATE CHAIRMAN MOORE: Thank you.
19 Now we're adjourned.

20 COMMISSIONER LAURIE: Wait, wait, wait -
21 - no, no, wait. Did Tim leave? Tim.

22 The newspaper indicated that the
23 proposed executive director of the Power Authority
24 will be the Governor's Chief Energy Adviser. Is
25 that in the legislation somewhere, or is that just

1 the position of the Governor?

2 Mr. Schmelzer is nodding no, it is not
3 in the legislation. So, okay, thank you.

4 ASSOCIATE CHAIRMAN MOORE: Thank you,
5 all.

6 (Whereupon, at 1:23 p.m., the business
7 meeting was concluded.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said business meeting, nor in any way interested in outcome of said business meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of April, 2001.

VALORIE PHILLIPS

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